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THE FACTORIES ACT 1948 & THE PAYMENT OF WAGES ACT

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THE FACTORIES ACT, 1948

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THE FACTORIES ACT, 1948.

INTRODUCTION

History of Labour Legislation in India. "The history of factory law in India has throughout been one of steady advance, each successive Act covering a wider field than the last and bringing within its orbit classes of workers and establishments which the increasing spread of industrialism has shown to be in need of protection or regulation." The earliest Indian enactment relating to factories was the Factory Act of 1881. It aimed at regulating the conditions of work of children, besides making provisions for the appointment of Government Inspectors, reporting of accidents and fencing of dangerous machinery. The subsequent Act of 1891 raised the minimum working age of the children and prohibited their employment on dangerous work. The importance of this Act, however lay not so much in the granting of increased protection to the child worker, as in its extension also to women workers. In addition the Act brought under control all places employing 50 instead of the previous 100 employees provided they used power machinery. The Act of 1891, was in itself a somewhat tentative measure and it was anticipated that an amending legislation would be called for at an early date. Having regard to the experience gained in the practical working of the Act, the Government of India came to the conclusion that time had arrived for undertaking an amending legislation and it, therefore, appointed a Factory Labour Commission in 1907, to inquire into the condition of labour in the factories and to submit its proposals. The report of the Commission submitted in 1908, disclosed the existence of abuses in factories, particularly in connection with the employment of children and the length of the hours for which the operatives were generally employed. The Commission made proposals with the object of checking those abuses, and also submitted proposals for strengthening the law on several points so that inspection might be

more effective and the administration of the law improved. With a view to give effect to the recommendation of the Labour Commission in so far as they were approved by the Government, a new bill was introduced in the Council in the year 1909 which was passed into law as Act XII of 1911. The new Act repealed both the earlier Acts, took the extremely important step of regulating the hours of men in textile factories as well as those of women and children. The hours of children employed in such factories were reduced from 7 to 6. At the same time new provisions in respect of health and safety were introduced. The importance of this Act in showing the gradual extension of the principle of control lay in the reduction of the number of workers necessary to constitute a factory from 50 to 20. It also took another step in protecting the child worker by excluding altogether those under 12 years, raising the age at which the industrial child became an adult to 15 years, and restricting the hours of the half-timer in all factories to 6 daily. The subsequent amending Acts of 1923 and 1926 did not make any change of importance in the scope of the Act either as regards establishments or classes of workers.

The next important stage in the factory legislation was the appointment of the Royal Commission on Labour in India. It made a number of recommendations for the amendment of the Factories Act. After examining these in detail, the Government of India drafted a Bill to replace the Factories Act of 1911, which by then was "a thing of shreds and patches" and stood in urgent need of consolidation and clarification. The bill was introduced in the Legislative Assembly and passed into Law as Act XXV of 1934. The Act of 1934 was amended 1944, 1945, 1946 and 1947 by the Factories (Amendment) Acts.

Statement of Objects and Reasons (Act LXIII of 1948) The existing law relating to the regulation of labour employed in factories in India is embodied in the Factories Act, 1934. Experience of the working of the Act has revealed a number of defects and weaknesses which hamper effective administration.

Although the Act has been amended in certain respects in a piece-meal fashion, whenever some particular aspect of labour safety or welfare assumed urgent importance, the general frame work has remained unchanged. The provisions for the safety, health and welfare of workers are generally found to be inadequate and unsatisfactory and even such protection as is provided does not extend to the large mass of workers employed in work-places not covered by the Act. In view of the large and growing industrial activities in the country, a radical overhauling of the Factories Law is essentially called for and cannot be delayed.

The proposed legislation differs materially from the existing law in several respects. Some of the important features are herein mentioned. Under the definition of "factory" in the Act of 1934 several undertakings are excluded from its scope but it is essential that important basic provisions relating to health, working hours, holidays, lighting and ventilation should be extended to all work places in view of the unsatisfactory state of affairs now prevailing in unregulated factories. Further the present distinction between seasonal and perennial factories which has little justification, has been done away with. The minimum age of employment for children has been raised from 13 to 15 and their working hours reduced from 5 to 4½ with powers to Provincial Governments to prescribe even higher minimum age for employment in hazardous undertakings.

The present Act is very general in character and leaves too much to the rule-making powers of the Provincial Governments. While some of them do have rules of varying stringency, the position on the whole is not quite satisfactory. This defect is sought to be remedied by laying down clearly in the bill itself the minimum requirements regarding health (cleanliness, ventilation and temperature, dangerous dusts and fumes, lighting and control of glare, etc.) safety (eye protection, control of explosive and inflammable dusts, etc.) and general welfare of workers (washing facilities, first aid, canteens, shelter rooms, creches, etc.) amplified, where necessary, by rules and regulations to be prescribed by Provincial Governments.

Further the present Act leaves important and complex points to the discretion of Inspectors, placing heavy responsibility on them. In view of the specialized and hazardous nature of the processes employed in the factories, it is too much to expect Inspectors to possess an expert knowledge of all these matters. The detailed provisions contained in the Bill will go a long way in lightening their burden.

Some difficulties experienced in the administration of the Act, especially relating to hours of employment, holidays with pay, etc., have been met by making the provisions more definite and clearer. The penalty clauses have also been simplified. An important provision has also been made in the Bill empowering Provincial Governments to require that every factory should be registered and should take a license for working to be renewed at periodical intervals. Provincial Governments are further being empowered to require that before a new factory is constructed or any extensions are made to an existing one, the plans, designs and specifications of the proposed construction should receive their prior approval.

It is expected that the Bill when enacted into law will considerably advance the conditions of workers in factories.

The substantial changes made in the law are also indicated in the Notes on Clauses. Opportunity has also been taken to rearrange the existing law and to revise expressions where necessary.”*

Notes on Clauses.

Clause 2.—Of. Section 2. The age limit in the case of adults and adolescents has been raised from 17 to 18. The interpretation of the item “machinery” has been widened by bringing in “prime mover” and “transmission machinery” and the interpretation of the term “factory” has been modified so as to cover those establishments which employ ten or more persons every day.

Clause 3.—Of. Section 3.

Clause 4.—Of. Section 7. The only change is in respect of reference to the number of persons employed.

Clause 5.—Of. Section 6.

Clause 6.—Cf. Section 8.

Clause 7.—This is a new clause. As designs of most of the factory buildings and lay out of machinery have been found unsatisfactory and the building materials used not suited to climatic conditions of the place, which made working conditions unusually trying, this clause regarding approval, licencing and registration of factories is considered very necessary

Clause 8.—Cf. Section 9.

Clause 9.—Cf. Section 10.

Clause 10.—Cf. Section 11.

Clause 11.—The existing Section 12 has been amplified by laying down the duties of the certifying Surgeons more clearly.

Chapter III, Chapter IV, Chapter V.

The existing Chapter III relating to "Health and Safety" has been split up into three separate chapters each dealing with health, safety and welfare of workers. The clauses in these chapters have been redrafted and amplified, prescribing the minimum standard required.

Clause 51.—Cf. Section 34. The noticeable change is that the distinction between "seasonal" and "non-seasonal" factories has been removed. Also the words "allowed to work" wherever they occur in the existing Act have been substituted by the words "employed" so as to obviate the plea that when the occupier was absent at the time he could not have "allowed" the worker to work.

Clause 52.—Cf. Section 35.

Clause 53.—Cf. Section 35-A. A time limit has been fixed within which a compensatory holiday must be given.

Clause 54.—Cf. Section 36. The proviso has been omitted as it was proposed to do away the distinction between "seasonal" and "non-seasonal" factories.

Clause 55.—Cf. Section 37. As hours of daily work have been reduced to nine the period of work before rests have been reduced to five and the Provincial Governments have been empowered to prescribe higher limit of rest upto one hour in cases where they consider a longer rest interval necessary. The existing Section 37 has been redrafted to provide for this

Clause 56.—Cf. Section 38.

Clause 57.—Cf. Section 48. This has been redrafted in order to make it clear that a continuous rest period of twenty four hours will be counted as a day's holiday.

Clause 58.—Cf. Section 49.

Clause 59.—Cf. Section 47. In this clause also the distinction between 'seasonal' and 'non-seasonal' factories has been removed.

Clause 60.—Cf. Section 48.

Clause 61.—Existing Sections 39 and 40 have been combined and redrafted with verbal changes.

Clause 62.—Existing Section 41 has been redrafted with verbal changes. It has been made obligatory on the part of the managers to show the registers to the Inspectors at all times during working hours.

Clause 63.—*Cf.* Section 42.

Clause 64.—*Cf.* Section 43. In para (h) of Sub-clause (2) the workers attending to power plant or transmission machinery have also been included for purposes of exemption.

Clause 65.—*Cf.* Section 44.

Clause 66.—*Cf.* Section 45. The second proviso in Sub-section (1) of existing Section 45 has been omitted to conform to the deletion of the distinction between 'seasonal' and 'non-seasonal' factories.

Clause 67.—This is a new clause enabling the Provincial Governments to make rules to Supplement Chapter VI.

Clause 68.—*Cf.* Section 50. Minimum age has been raised to thirteen.

Clause 69.—*Cf.* Section 51.

Clause 70.—The existing Section 52 has been redrafted and provisions regarding the examination and re-examination of young persons and grant of certificates of fitness to them tightened. To avoid unnecessary work on the certifying surgeon it has also been provided that he will examine only those young persons, who produce a certificate from the manager that he will be employed in his factory if found fit.

Clause 71.—*Cf.* Section 53.

Clause 72.—As the hours of work of adults have been reduced to nine, the half-time period of a child has also been reduced to 4½ hours. The existing Section 54 has been redrafted to provide for this change. A new sub-clause has also been added to prevent overlapping shifts in the case of children.

Clause 73.—*Cf.* Section 55. Sub section (1) of the existing section has been omitted as it is covered by sub-clause (8) of Clause 61.

Clause 74.—*Cf.* Section 74. As in the case of Clause 62, it has been made obligatory on the part of the managers to make available the registers to the Inspector at all times during working hours.

Clause 75.—*Cf.* Section 57.

Clause 76.—*Cf.* Section 58.

Clause 77.—*Cf.* Section 59.

Clause 78.—*Cf.* Section 59-C.

Clause 79.—The reference to 'seasonal' factory in the existing Section 49-A has been omitted and that section has been redrafted to exclude persons working in a manufacturing process which is ordinarily carried on for less than 160 days in a year.

Clause 50.—The existing Section 49-B has been completely recast and expanded to remove the practical difficulties which were experienced in its working. It provides for the grant of holidays in two spells to cover the need of workers. It also provides for the grant of proportionate holidays to workers, whose services have been terminated but who have completed six months continuous service. Provision has also been made for condoning unauthorised absence upto 20 days.

Clause 81.—*Cf.* Section 49-C.

Clause 82.—*Cf.* Section 49-D. Advance payment has been limited to holiday for not less than six days.

Clause 83.—*Cf.* Section 49-E.

Clause 84.—*Cf.* Section 49-F.

Clause 85.—*Cf.* Section 49-G. The question whether the factory leave rules are substantially similar to those provided for in the Bill is left to be decided by the Provincial Governments in future.

Clause 86.—This is partly a replacement of the existing Sections 59-A and 59-B. The basic provisions regarding health, safety and welfare have been made applicable to all work places irrespective of the number of workers employed and excluding premises where processes are carried on by the occupier with the aid of his family only.

Clause 87.—The heading of the existing Section 33 (4) has been changed from "Hazardous operations" to "Dangerous operation" and a new sub-clause enabling the Provincial Governments to make rules prohibiting, restricting or controlling the use of any specified materials or processes in connection with the dangerous operations has been added.

Clause 88. *Cf.* Section 30. For the words "forty-eight hours" in the existing section the words "seventy-two hours" have been substituted.

Clause 89.—This is a new clause which has been inserted with a view to control industrial diseases.

Clause 90.—This is a new clause. It empowers the Provincial Governments to require a formal investigation in the case of serious accidents.

Clause 91.—This is a new clause intended to facilitate investigation of cases involving contravention of the safety proviso.

Clause 92.—The existing Section 60 has been redrafted with a view to make the breach of any Section or of any rule or order made under the Act an offence which can be punished with imprisonment or fine or both.

Clause 93.—This is a new clause defining the liability of the owner of premises in certain circumstances.

Clause 94.—*Cf.* Section 61. The limit of fine has been raised and provision has been made for awarding imprisonment for a period of one year.

Clause 95.—This is a new clause intended to cover offences involving several persons.

Clause 96.—*Cf.* Section 63.

Clause 97.—This is a new clause prescribing penalty for disclosing the result of analysis made under Clause 91.

Clause 98.—This is a new clause prescribing penalty for offences committed by workers.

Clause 99.—*Cf.* Section 67. Punishment include imprisonment also.

Clause 100.—*Cf.* Section 68. The word 'on guardian' have been omitted from the heading.

Clause 101.—*Cf.* Section 70. The heading has been slightly changed and a new sub-clause (3) added to cover the case of buildings owned by Companies, etc.

Clause 102.—The existing Section 71 has been recast and the provisions made more definite.

Clause 103.—This is a new clause which empowers the courts to pass orders on the occupier or manager of factories to take such measures for remedying the matters in respect of which offence has been committed.

Clause 104.—*Cf.* Section 72.

Clause 105.—*Cf.* Section 73.

Clause 106.—*Cf.* Section 74.

Clause 107.—*Cf.* Section 75. In view of the great distances in India and the possible infrequency in the visits of Inspectors the six months period has been made to date from the time the offence came to the knowledge of the Inspector instead of the date of offence.

Clause 108.—*Cf.* Section 31.

Clause 109.—The existing Section 76 has been recast and a new sub-clause (3) added, which would enable the display of any notice or poster relating to health, safety and welfare of workers on a factory.

Clause 110.—This is a new clause enabling Provincial Governments to prescribe the manner of service of orders on occupiers or managers of factories.

Clause 111.—*Cf.* Section 77.

Clause 112.—This is a new clause defining the obligation of workers.

Clause 113.—This is a new clause giving general powers to the Provincial Governments to frame rules.

Clause 114.—*Cf.* Section 79.

Clause 115.—*Cf.* Section 80.

Clause 116.—*Cf.* Section 81.

Clause 117.—This is a new clause which seeks to amend subsection (3) of Section 3 of the Employment of Childrens Act, 1938 by which the age of employment of children is raised from 12 to 13.

Clause 118.—This is a new clause.

The Schedule.—This has been added with reference to Clauses 89 and 90.

Report of the Select Committee.—The following Report of the Select Committee on the Bill to consolidate and amend the law regulating labour in factories, was presented to the Constituent Assembly of India (Legislative) on the 9th August, 1948.¹

We the undersigned members of the Select Committee to which the Bill to consolidate and amend the law regulating labour in factories was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed hereto. The amendments are mostly self-explanatory, but the following clauses need some comments:—

Clause 1 (2).—Some acceding States have accepted the subject matter of this Bill as a matter with respect to which the Dominion Legislature may make laws for such States. We have therefore amplified sub-clause (2) so as to make the Bill applicable not only to the Provinces of India but to such acceding States.

Clause 2 (k).—The definition of “manufacturing process” has been amplified so as to include printing and shipbuilding.

Clause 13 (2).—The Provincial Governments have been empowered to make rules prescribing the standard of ventilation and reasonable temperature in a factory. We consider it important that every factory should have at least one thermometer. A provision has been made in this sub-clause to that effect.

1. *Gazette of India*, Part V, dated August 21, 1948.

Clause 16 (2).—The Bill provided for a minimum space of 350 cft. for each worker in a factory. We consider this to be insufficient, and have, therefore, increased the limit to 500 cft. of space for a factory built after the commencement of this Act.

Clause 18.—We consider that in every factory arrangements should be made for supplying cold and wholesome drinking water and for the distribution thereof. The clause has been amended accordingly.

Clause 20.—Spitting is the cause of numerous diseases. We have therefore provided that the spittoons to be provided in a factory shall be of a prescribed type and sufficient in number. Spitting anywhere except in the spittoons has specifically been made an offence.

Clause 47.—Where a lunch-room is provided we have prohibited workers from eating any food in work-rooms.

Clause 59 (3).—We have amplified sub-clause (3) so as to include within the meaning of the expression “ordinary rate of wages” all payment and concessions made to a worker, whether in cash or in kind except bonuses.

Clause 64.—We consider it necessary to put a limit to overtime work. Therefore in sub-clause (4) the maximum limit of daily and quarterly overtime has been provided. It has also been provided that the spread-over shall not exceed 12 hours in any one day.

Clause 78.—The leave rules of the Federal Railways are more liberal than the provisions of this Act, and therefore, we have provided that the provisions of Chapter VIII shall not apply to any workshop belonging to a Federal Railway.

Clause 79.—We have amended sub-clause (1) so as secure for every adult worker leave of one day for every 20 days of work performed by him in the previous year, subject to a minimum of 10 days, and for every child leave of one day for every 15 days of work performed by him, subject to a minimum of 14 days.

Clause 81.—We consider that the wages due to a worker for a period of leave for 4 days or more in the case of an adult and 5 days or more in the case of a child should be paid in advance. The clause has been amended accordingly.

Clause 86.—We have restricted this clause only to such institutions as are maintained for the purpose of education, training or reformation.

Clause 94.—We have simplified the clause and provided for a uniform enhanced penalty after the first conviction.

Clause 113.—We consider that the Central Government should have a general power of direction to the Provincial Governments. This clause has been inserted accordingly.

Schedule.— We consider that certain diseases mentioned in the Schedule should be omitted while others should be added. The Schedule has been amended accordingly.

The Bill was published in Part V of the Gazette of India, dated the 13th of December 1947.

SD : Jagjivan Ram.

• Khandubhai K. Desai.

B. Shiva Rao.

Renuka Ray.

• Gokulbhai Daulatram Bhatt.

Sundar Lall.

Nandkishore Das.

T. A. Ramalingam Chettiyar.

Naziruddin Ahmad.

Hari Vishnu Kamath.

• K. Santhanam.

Arun Chandra Guha.

Balkrishna Sharma.

New Delhi :
The 9th August 1948.

Minute of Dissent.

While we approve of the Bill as it has emerged from the Select Committee, we differ on the following two points :—

- (1) We feel that no purpose is served in maintaining the distinction in 2 (m) between factories using power and those not using power. For statistical and reconstruction purposes, it would be better to have a single definition i.e., any premises whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is carried on or is ordinarily so carried on.
- (2) We are also opposed to the proviso to 66(1) giving power to Provincial Government to allow employment of women between 10 p.m. and 5 a.m. We feel that this is likely to lead to abuses and to prove destructive of the home life of the women workers.

K. Santhanam.

NEW DELHI :

Khandubhai K. Desai.

The 9th August, 1948.

Gokulbhai Daulatram Bhatt

Commencement of the Act.—The Act was passed by the Constituent Assembly on the 28th August, 1948, and received the assent of the Governor-General on the 23rd September, 1948, (*vide* the Gazette of India Extraordinary dated 23rd September, 1948). It comes into force from 1st April 1949. [S. 1(3)]

Salient features of the Act.—Some of the important features introduced in the Factories Act are as follows :—

1. The Act applies also to such of the acceding States, as by their Instruments of Accession, have accepted the subject matter of the Factories Act as a matter with respect to which the Dominion Legislature may make laws for such States. [S. 1(2)].
2. The age of an 'adult' has been raised from 17 to 18. [S. 2(a)].
3. The definition of the term 'factory' has been

- modified so as cover those establishment which employ 10 or more persons every day [S. 2(m)].
4. The words 'relay' and shift have been defined for the first time. [S. 2(r)].
 5. The Provincial Governments have been empowered to make rules for prescribing the standard of ventilation and 'reasonable temperature' in a factory as will secure to workers reasonable conditions of comfort. Every factory will now be required to keep one thermometer (S. 13).
 6. Approval, licencing and registration of factories have been made compulsory and the Provincial Governments have been empowered to make rules in that behalf. Before a new factory is constructed, or any extensions are made to an existing one, the plans, designs and specifications of the proposed construction should receive prior approval of the Government (S. 6).
 7. The factories built after 1st April, 1949 shall provide for a minimum space of 500 cft. for each worker (S. 16).
 8. Every factory having two hundred and fifty workers shall make provision for supply of cold water during hot weather [S. 18(3)].
 9. Every factory shall provide spittoons at convenient places in the factory and no person shall spit within the factory premises except in the spittoons. Non-compliance with this provision has been made punishable (S. 20).
 10. Selling or letting on hire or causing to be sold or let on hire, for use in a factory, any machinery driven by power, which does not comply with the provisions of sub-section (1) of Section 26, has been made punishable with imprisonment upto three months (S. 26).
 11. Lifts and hoists constructed after 1st April, 1949 shall comply with additional requirement laid down in S. 28(2).

12. Restrictions have been placed in respect of use of cranes, Revolving machinery and pressure plant installed in a factory (Ss. 29, 30 and 31).
13. The Provincial Governments have been empowered to require that effective screens or suitable goggles shall be provided for the protection of persons working on processes involving risk to the eyes (S. 35).
14. The distinction between 'seasonal' and 'non-seasonal' factories has been done away with (S. 51).
15. Limit has been placed on the overtime work allowed in the factories. Except in the case of workers engaged on urgent repairs the total number of hours of work in any day shall not exceed ten, nor shall the total number of hours of overtime exceed fifty for any one quarter [S. 64 (4)].
16. A worker, entitled to leave but unable to avail of the same, shall be paid the amount in respect of leave not taken if he quits the employment or is discharged from his employment (S. 79).
17. The owner of a premises or building, has been rendered liable for contravention of the provisions of Chapters III, IV and V in respect of any part of the premises or building which is used as a factory (S. 93).
18. Persons convicted of offences in respect of provisions of this Act or of any rule made therein, are liable to enhanced penalty on a subsequent conviction (S. 94).
19. The Courts have been empowered to pass orders on the occupier or manager of factories to take such measures for remedying the matter in respect of which offences has been committed (S. 102).
20. Provisions have been made for rendering workers liable for interfering with any appliance, convenience or other thing provided in

the factory for the purposes of securing the health, safety or welfare of workers or neglecting to make use of any such appliance, or thing (S. 111).

21. The Central Government has been given general power of direction for carrying out the provisions of the Act (S. 113).

Scope and object of the Act.—The factory legislation is primarily designed to secure for the worker the advantages of citizenship—a neat and healthy place to work, a guarantee of leisure during toil and an assurance of adequate enjoyment of the fruit of his labour. The Indian Factories Act does not claim to be a charter of the rights of the working classes, but certainly it does incorporate some important items in the charter of rights. The Factories Act and the State Insurance Act, taken together constitute a major portion of the charter of rights of the working classes in the industries.

“On Labour matters it appears to me that there is too much of law and too little good. We are much ahead of other countries in the world so far as legislation is concerned but in terms of actual good done to labour we are far far behind any other country in the world.”¹ The Act is nothing more than a summary of the previous factory laws and it is doubtful if it would bring millennium to the workers. What the workers wanted was better wages and this could only be ensured by the introduction of profit sharing system. Moreover the facilities for training labour to become better workers were singularly lacking in the Act. No provision has been made for compulsory establishment of technological institutes or evening classes for the labourers to learn to become a better worker.

The I.L.O. The International Labour Organisation is an organisation of nations, financed by Governments and democratically controlled by representatives of Governments, of management and of labour organisations.

1. Speech in the Constituent Assembly.

Its purpose is to promote social justice in all the countries of the world. To this end it collects facts about labour and social conditions, formulates minimum international standards, and supervises their national application.

The machinery of the organisation consists of :

The International Labour Office, which acts as a Secretariat, a world information centre, and a publishing house. It is staffed by experts drawn from many different countries, whose knowledge, experience and advice are available to all the nations which are members of the organisations. It has branch offices and correspondents in many countries.

The Governing Body, composed of 16 Government representatives, 8 representatives of management and 8 representatives of labour, which is the executive council of the organisation and exercises supervision over the work of the office and frames its budget.

The International Labour Conference, which is a world parliament for labour and social questions. Each national delegation to the annual meetings, comprises four delegates, two representing the government, one representing management, and one representing labour; each of these three sections speaks and votes independently, so that all points of view find full expression.

The Conference adopt minimum international standards which are formulated in special international treaties called *Conventions* and in *Recommendations*. These are based on careful fact-finding discussions. As a two-thirds majority of the conference is required for their adoption, they represent the general agreement of informed world opinion. These deal with *hours of work, paid vacations, women's work, the protection of children, prevention and compensation of industrial accidents, insurance against unemployment, sickness, old age and death*, colonial labour problems, conditions of seamen, etc.

The decisions of the Conference are not automatically binding. Governments must submit the Conference standards to their national legislatures. If a legislature

accepts a Convention, the Government is bound to apply the Convention and to submit an annual report showing how it is applying it, which is scrutinized by special I.L.O. Committees.

Members of the I. L. O.—The following are the members of the International Labour Organisation :—

- | | | |
|-------------------------|---------------------|-----------------|
| (1) Afghanistan | (2) Albania | (3) Argentina |
| (4) Australia | (5) Austria | (6) Belgium |
| (7) Bolivia | (8) Brazil | (9) Bulgaria |
| (10) Burma | (11) Canada | (12) Chile |
| (13) China | (14) Columbia | (15) Cuba |
| (16) Czechoslovakia | (17) Denmark | |
| (18) Dominican Repub. | (19) Ecuador | (20) Egypt |
| (21) Eire | (22) Ethiopia | (23) Finland |
| (24) France | (25) Greece | (26) Guatemala |
| (27) Haite | (28) Hungry | (29) Iceland |
| (30) India | (31) Iran | (32) Iraq |
| (33) Italy | (34) Liberia | (35) Luxemburg |
| (36) Mexico | (37) Netherlands | (38) Newzealand |
| (39) Norway | (40) Pakistan | (41) Panama |
| (42) Peru | (43) Philippines | (41) Poland |
| (45) Portugal | (46) Siam | (47) Sweden |
| (48) Switzerland | (49) Turkey | |
| (50) Union of S. Africa | (51) United Kingdom | |
| (52) United States. | (53) Uruguay. | (54) Venezuala |
| (55) Yugoslavia | | |

Sanitation. “It is a serious matter when a nation, with or without thought, brings its countrybred people for the purposes of work from the villages into centres that quickly develop into large towns without proper provision in the way of housing, drinking water and proper methods for the disposal of sewage. In the United Kingdom this was done without thought at the end of Eighteenth Century and we have suffered ever since in that conglomeration of slums that goes to make up such a large part of our industrial towns, a mistake which three generations of active legislation and massive sanitary engineering has not yet fully eradicated.

“It is so easy for India to make the same mistake ; a factory with the best intentions is put down well outside a large town and draws its labour from neighbouring

villages. First one and then another gets tired of the journey to work and puts up temporary huts of few pieces of galvanized iron near the Works, and before the danger is realised there is a centre with a population too great to be able to get rid of its filth or to draw its drinking water from the neighbourhood as the same population is able to do when scattered over a wide area in villages. By this I do not mean that these amenities are not needed in the villages, they often are sadly needed, all I do mean is that a scattered population can deal with these matters without that great risk of those diseases that are the results of insanitation and impure water that is inevitable in congested areas.

"A first necessity then for a nation that intends to become industrialised is to see that decent provision is made for the housing of the workers that may be brought together in large masses to work in its factories and to see that these houses are provided with the proper amenities for cleanliness and health. How these houses are to be built or who is to build them is not for me to say. I only say that a sound industrial system cannot exist without them. The requirements have been considered and the details worked out in such reports as that of the Royal Commission on Labour in India, the Health Survey and Development Committee known as the *Bhore Report* and in the report of the Industrial Housing Sub-Committee of the Standing Labour Committee, and perhaps my only excuse for referring to the matter is that I feel that the contents of these reports and of others, as well as knowledge of the actual conditions of some of the present houses, are not known to those who make up that collected opinion of India that must be available to help the State in dealing with these matters.

"There is much to be done, first in putting right the centres of population that are still without those amenities and secondly in giving thought to real planning to avoid the mistakes that have been made here and in other countries in the new centres that may come into being. India has this advantage that still ninety per cent of its population live away from large centres of

population while eighty per cent of the population of the United Kingdom live in towns, but it is also well to remember that, because of the immense total population of India, this does not mean a very great divergence in actual numbers in the two countries. The United Kingdom also suffered, in this respect, from the fact that it was first in the Industrial Revolution when, under the doctrine of *laissez faire* not only was no attempt made to plan the towns but it was actually thought wrong for any government to interfere in such matters. As a consequence the factories took the best sites and houses were crowded round them just as the jerry builder pleased to erect them and without thought of planning on amenities by any one. India can avoid this by planning now." ¹

Canteens. It is an equally elementary fact that no workman can produce good and efficient work without food of sufficient quantity and of the right kind. This is such an immense question throughout India that it is engaging the attention of the best brains in the country. Western industrial nations, at the time of the Industrial Revolution, were so enamoured by the machines they were inventing that they almost turned them into gods. They gave to these machines all the oil, cleaning and repair that was necessary for efficient work, but few gave any thought to the fact that even greater attention was necessary (even from the lowest motive of obtaining efficiency), to be given to that most delicate, most complicated and most precious—the human machine.

On the question of the actual provision of food, though it had been solved to some degree by the gradual rise in wages, it is remarkable that it was only in the war years that the necessity of making real provision of food available for workers was realised. Many hostels had to be built for the housing of the workers transferred to work in large munition factories and a deliberate plan was set on foot and given legal sanction to set up canteens in every factory employing more than

1. Elements of Industrial Well Being by Sir Wilfrid Garrett

two hundred and fifty persons. As a result, canteens supplying a hot cooked mid-day meal as well as snacks and tea in the breaks were set up in ninety-eight per cent of the factories where they were required by law and so successful were the results that this led to the voluntary initiation of canteens in about six thousand other factories employing less than the legal number. With the canteens set up in docks and building sites there were in use in the last year of the war about 12,000 canteens on places under the jurisdiction of the Factory Department, besides those on mines and railways and in addition to the provision made for isolated workers through British Restaurants. The object of the provision of all these canteens was to ensure that those engaged in manual labour should have an opportunity of getting extra food in addition to the meagre ration that they were entitled to as citizens, but there was also the sound principle behind it that good manual work cannot be done without good food.¹

PUBLIC OPINION AND FACTORY CONDITIONS.

“It is not sufficient to say that it is no use supplying the physical amenities necessary because the workers will not use them, or will even mis-use them and break them up. Factories should lead the way in setting a high standard in such amenities as latrines, drinking water, washing accommodation, canteens and creches ; in so doing, quite apart from the added efficiency they will give to their own workers, they will be doing something great for the community in teaching people the correct use of these amenities. The first pit-head baths on a coalfield well known to me were badly used (by about 2 % of the miners) when first erected that it was openly asserted that the money expended, had been wasted. Twenty-five years later (one generation) 90 per cent. of the miners at these pits were using the baths with the result that a new standard of cleanliness has been set up in the miners' houses. I am old enough to remember the introduction of modern water closets into factories often before they had been fitted into the neighbouring houses. The use of these closets was so bad that they

1. *Elements of Industrial Well-Being* by Sir Wilfrid Garrett.

were constantly under repair, but improvement soon came and as a result, when these amenities became general in the houses, the experience in the factories had taught their proper use.

"The same results will follow in the case of new and better houses. The slum dwellers of our cities in England when removed to the suburbs into new blocks of flats or houses erected by peabody or other philanthropic trusts in the middle of the last century, often created such disturbances and made such slums of the new dwellings that Policemen had to be given free accommodation in the buildings to maintain order. In the next generation, however, the actual children of the original people who were moved turned these dwellings into clean and respectable abodes. The factory then can do much to help in teaching the villagers new to town life and the slum dwellers the proper use of these amenities : but, of course, they must, in the first case be provided because no human being should be asked to work in any place where they are not provided, and secondly because the law requires such provision".¹

Difficulty of Inspectors. "When Inspectors of Factories began their work in the United Kingdom in 1833, they were opposed from every quarter by masters, by magistrates, by the general public and even by workers ; the only exceptions were a few philanthropists, a few good employers, and those who were organized into Trade Unions with leaders who had the vision to see the advantages of the ultimate objects. In face of this opposition, Inspectors could do little more than act in a police capacity and force compliance with the law, often by sheer character against the very courts who were supposed to administer the law. With the first World War came a change ; the value of the individual worker was more appreciated and with it the value of the work done under the Factory Acts during the previous 80 years. From that time onwards, to a greater and greater extent both employers and workers accepted inspectors as highly trained in the techniques of their own job and as persons who were able and

1. Elements of Industrial Well-Being by Sir Wilfrid Garrett.

willing to give advice in the increasing hazards and dangers that were coming so rapidly into industry through the inventions of new processes in the Chemical and other industries. The Inspectorate took advantage of this and developed this advisory side of their work in every way possible.

Then came the Second World War to complete the progress to which all the foregoing was but an introduction."

INDUSTRIAL HEALTH. "Very little has been done in the past in India either by legal enactment or in actual fact to deal with the subject which is known as Industrial Health in the industrialised nations of the West. This is shown by the fact that India does not have a single Medical Inspector of Factories and that research into this subject is practically non-existent. It is true that doctors are employed in many Indian factories, but with the exception of two organisations, their work consists entirely, in controlling a dispensary for dealing with the ordinary illness of the people employed in the factory and of their families. So fully employed are they on this work that they have no time to go inside the factory and study the environmental conditions of work that may affect the persons employed.

"Industrial Health, as now conceived, can be divided for practical purposes, into two departments: (1) the control of specific diseases due to the use of certain substances or due to certain processes in factories; and (2) the protection of the general health of the operatives from ailments that they may be due to defects in ventilation, humidity, excessive heat and the like, effects which may affect the general health of all employed persons. The control of the first is the primary duty of the Inspectors of Factories enforcing legislation that is now well-known and accepted. While the second, though in some degree controlled by legislation is becoming more and more the sphere of the Industrial Medical Officer, who, of course also takes his share in the control of Industrial Diseases.

“The father of the study of direct industrial diseases and of the institution of legal enactments to control and prevent these diseases was Sir Thomas Legge, appointed the first Medical Inspector of Factories (in any country) in Great Britain in 1898. His first great work was an attack on Lead Poisoning and the result of his work and of that of his colleagues in the Factory Department, is shown in the number of cases of Lead Poisoning reported in U. K. ; in 1900 the number was 1058 and in 1945, 45, while we know that the actual reduction was even greater because in 1900 the cases were not all reported while to-day all are known.

“In his fight against this disease, Legge laid down four principles that, while armed particularly against Lead poisoning, can be applied with almost equal force to other similar diseases and some of them even to the prevention of accidents ; they, therefore, warrant the closest study by all concerned with the well-being of workers in factories. They are :—

(1) Unless and until the employer has done everything—and everything means a good deal—the workman can do next to nothing to protect himself, although he is naturally willing enough to do his share.

(2) If you can bring an influence to bear external to the workman (i.e., one over which he can exercise no control) you will be successful ; and if you cannot or do not, you will never be wholly successful.

(3) Practically all industrial lead poisoning is due to the inhalation of dust and fumes : and if you stop their inhalation, you will stop the poisoning.

(4) All workmen should be told something of the danger of the material with which they come into contact and not be left to find it out for themselves—sometimes at the cost of their lives.

The carrying out of these precautions requires the closest co-operation between doctors, engineers and chemists, both in the factory and in the ranks of Factory Inspectors. Any success that may have been

gained in the United Kingdom has been due, in a large measure, to the team work that exists between Inspectors with varied qualifications and again in the confidence and trust that exist between these Government Inspectors and the heads of firms and their technical staffs. Without this team work and confidence little progress will be made. This requires first a keen Inspectorate competent in their work and alive to its value and also requires that this Inspectorate should be received by managements as friends and advisers who are out to help and are competent to do so".¹

1. Elements of Industrial Well-Being by Sir Wilfrid Garrett.

THE FACTORIES ACT, 1948

ACT NO. LXIII OF 1948.

An Act to consolidate and amend the law regulating labour in factories.

WHEREAS it is expedient to consolidate and amend the law regulating labour in factories ;

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1)
This Act may be called the Factories Act, 1948.

(2) It extends to all the Provinces of India and shall extend to such Acceding States as, by their Instruments of Accession, have accepted the subject matter of this Act as a matter with respect to which the Dominion Legislature may make laws for such States.

(3) It shall come into force on the first day of April 1949.

Object of Consolidation. The object of consolidation is to gather and bring up-to-date, the statutory law relating to any particular subject so that it may serve as a useful code applicable to the circumstances existing at the time when the consolidating act was passed.

The Factories Act, 1948, which comes into force on the first day of April 1949, repeals The Factories Act, 1934, The Factories (Amendment) Acts, 1944, 1945, 1946 and 1947. (S. 120).

Construction of the Act. The provisions of the Factories Act have to be constructed in favour of the employee and strictly against the employer ; but the Act which is enacted for the benefit of the employee should not be used merely for the purpose of harassing the employer. [1934 Cal. 730]. The Factories Act should be properly enforced for the protection of workmen but on the other hand one must also bear in mind that the employer's position has also to be considered. It may be that without negligence on their

part defects will exist in their factories but if they are to be proceeded against in a criminal court for alleged negligence then it would seem only fair that the matter should be clearly brought home to them [925 Bom. 143.]

Scope and object of the Act. See Introduction.

Applicability to States. The Act extends to such Acceding States as, by their Instrument of Accession, have accepted the subject matter of this Act as a matter with respect to which the Dominion Legislature may make laws for such States. [S. 1(2)]. For list of Acceding States See Appendix 1.

Applicability. The Act is primarily applicable to factories as defined in Clause m of Section 2, but the Provincial Government may, by notification under Section 85, declare that all or any of the provisions of the Act shall apply to any other place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on. Such a place, on declaration, shall be deemed to be a factory. [S. 85 (2)]. The Act is also applicable, except where otherwise provided, to factories belonging to the Central or Provincial Government. (S. 116).

Special Act. The Indian Factory Act is a special Act. (49, IC. 860.)

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “adult” means a person who has completed his eighteenth year of age ;
- (b) “adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year.
- (c) “child” means a person who has not completed his fifteenth year of age ;
- (d) “young person” means a person who is either a child or an adolescent ;
- (e) “ day ” means a period of twenty-four hours beginning at midnight ;
- (f) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories ;
- (g) “power” means electrical energy, or any other form of energy which is mechanically

transmitted and is not generated by human or animal agency ;

- (h) “prime mover” means any engine, motor or other appliance which generates or otherwise provides power ;
- (i) “transmission machinery” means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance ;
- (j) “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied.
- (k) “manufacturing process” means any process for—
 - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
 - (ii) pumping oil, water or sewage, or
 - (iii) generating, transforming or transmitting power ; or
 - (iv) printing by letterpress, lithography, photogravure or other similar work or book-binding, which is carried on by way of trade or for purpose of gain, or incidentally to another business so carried on; or
 - (v) constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels ;
- (l) “worker” means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any

other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process ;

(m) "factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923), or a railway running shed ;

(n) "occupier" of a factory means the person who has ultimate control over the affairs of the factory, and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory;

(o) "managing agent" has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913) ;

(p) "prescribed" means prescribed by rules made by the Provincial Government under this Act;

(q) "Provincial Government" includes the Government of an Acceding State to which this Act applies and all references to a province shall be construed as references also to an Acceding State ;

(r) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay" and each of such periods is called a "shift".

- (g) *Power*. "Other form of energy" is *ejusdem generis* with steam power or water power and so does not include hand power. (1902) *I.K.B.* 237.
- (j) *Machinery*. The definition of the word "*machinery*" has been widened by bringing in *prime mover* and *transmission machinery* (notes on clauses). Machinery which is out of order and cannot be used on account of its being under repair is "*machinery*" within the definition of the word. (1902) *I.K.B.* 233.
- (k) *Manufacturing process*. The process of shaping slate is a *manufacturing process* (21 *L.T.* 425) so also laundrying by means of steam (102 *L.T.* 571). "*Manufacturing process*" is not confined to the making of articles, but the words refer to the business that is carried (1010) 74 *J.P.* 219. Parties carried on the business of Calico printers at two places distant from each other seven miles. The business of a calico printer consists of four processes, *viz.*, bleaching, printing, dying and finishing. Three of these processes, *viz.*, the bleaching, dying and finishing were performed at one branch of the estate, and the fourth, *viz.*, printing at the other. Held that bleaching, dying and finishing were incidental to the process of printing. Hoyle Oram 12 *C.B.* (N.S.) 124. Where however bottles were filled with beer by hand but the bottles had been previously cleaned by a brush drawn by a gas-engine, it was held that the gas engine was not used in aid of manufacturing process. (1901) 2 *K.B.* 327.
- Keeping the machines in motion and producing yarn, but merely for the purpose of cleaning machinery is not a manufacturing process. (1910) 75 *J.P.* 6.
- Adopting for sale of an article* does not mean an operation merely incidental to serving in a shop, whether carried on in the shop itself. [(1901) 2 *K.B.* 209]. The process of mixing carbonic acid gas with beer by mechanical means and then bottling the mixture is adopting for sale (1902) 86 *L.T.* 417.
- (l) *Worker*. The term worker as defined in this Sub-clause is very wide and includes persons employed in repairing machinery or putting up new machinery even if such machinery is not in actual use at the time. A person 'employed' in erecting a new boiler for an electric supply undertaking has been held to be a 'worker'. (1947 *Nag.* 83).

Employed. The question whether a particular worker comes within the definition of the Clause (l) has to be settled by the Inspector of Factories (now the Provincial Government) who is constituted authority under the law to express the opinion whether the person holds a position of supervision or management or is employed in a confidential capacity. All persons not strictly coming

within the exception contemplated by Section 29 (now Section 64) and those in whose cases there is 'opinion' of the Inspector entitling the manager to claim exemption are to be deemed as persons 'employed' in the factory. (1934 Cal. 730). A salesman is not a person *employed* in a factory (1935 M. W. N. 328). A person, who works in a factory, whether for wages or not, in any of the ways enumerated in sub-clause (l) shall be deemed to be *employed* in that factory. Where therefore, it is shown that certain persons were engaged in the factory in one of those ways, it must be presumed that they were *employed* in the factory. (1934 Cal. 546). A person working in finishing goods in a shed in which finishing alone is carried on but which communicates internally with other buildings in which printing is carried is deemed to be *employed* in a factory (7 L.T. 322.) Persons employed merely for selling the manufactured articles do not come within the definition of the word "employed". (1928 Lah. 78).

Through any agency. The question whether the workmen were employed by the owner of the factory or the merchants who owned the cotton did not make any difference. (1933 Nag. 283).

Incidental to. Parties carried on the business of calico printers at two places distant from each other seven miles. The business of calico printer, consists of four processes, viz., bleaching, printing, dyeing and finishing. Three of these processes, viz. the bleaching, dyeing and finishing were performed at one branch of the estate and the fourth, viz., printing at the other. Held that a person employed on the premises where bleaching, dyeing and finishing were performed, was employed in an *incidental* printing process and that the place where he was so employed formed part of the establishment where the chief process of printing was carried on. Hoyle v. Oram. 12 C. B. (N. S.) 124.

Connected with. The putting of ginned cotton into bales and having it pressed must be considered work *connected with* the manufacturing process within the meaning of Sub-clause (l). (1933 Nag. 283).

- (m) *Factory.* Under the definition of "factory" in the Act of 1934, several undertakings were excluded from its scope. In view of the unsatisfactory state of affairs prevailing in unregulated factories it was considered essential to extend the important basic provisions relating to health, working hours, holidays, lighting and ventilation to all work-places employing ten or more persons. The definition was therefore modified in the new Act so as to cover those establishments which employ ten or more persons every day. However the distinction between factories using power and those not using power has been maintained. In the Minute of Dissent to the Report of the Select Committee the three dissenting members differed on this point and appended the following note :

"We feel that no purpose is served in maintaining the distinction in 2(m) between factories using power and those not using power. For statistical and reconstruction purposes, it would be better to have a single definition, i.e., any premises whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is carried on or is ordinarily so carried on."

Definition. By a factory is meant a premises where anything is done towards the making or finishing of an article upto the stage when it is ready to be sold or in a suitable condition to be put on the market (1928 *Lah.* 78). A factory includes everything, machine rooms, sheds, godowns, yards, etc. If within these premises or precincts mechanical power is used in aid of any process for altering, making, etc. or for transport use or sale any article, then these premises or precincts are a factory. Thus the drying yard used for drying ground-nuts, and where machinery for decorticating the ground nuts was working, was held to be a part of the factory. (1927 *Mud.* 345). Factory denotes any premises as a composite whole with a central source of power, i.e. steam, water, electricity or any other mechanical power. The Khandesh mills and the ginning factory under the same roof and worked by the same power was held to be a factory (1933 *Bom* 109).

The limits of a factory are a matter of fact in each case and the walls and fences built round the factory fixes the boundaries. (1906 *A.C.* 325). A gas main, a quarter of a mile from the gas works is not a part of the gas works (1905) 2 *K. B.* 879. An electric station supplying a dock with power and light but 150 yards from the dock is not a part of it. (1907) 23 *T. L. R.* 610. Where the ground floor was used as a shop, the first floor as stock room and for trimming of hats (no mechanical power being used), the second floor as a factory for dress making where mechanical power was used; held that the first floor was not a factory or part of a factory (1915) *S.C. (a)* 18. Where in a large premises consisting of ten acres manufacture of cement was carried on chiefly in the open air, but in which there is no great building for employment of men and women under cover held that the premises did not constitute a factory notwithstanding that more than 200 people were employed for grinding (30 *L T.* 519). However, a shed, in which a steam engine was used to mix mortar for a building operation twenty yards away, was held to be a factory. (1899) 1 *Q. B.* 773. Two houses, let by the same owner to the same tenant and joined by a bridge were held to constitute one factory employing more than 40 persons. (1903) 68 *J. P.* 29.

In any part. Every part of the building is a factory even though no power is used in one or more parts (1882) 3 *B. & S.* 153.

Instances of. The following have been held to be factories.

- (a) Premises where beer was aerated by means of gas engines (1902) 66 J. P. 342.
- (b) A ship in dry dock (1971) A. C. 404, See also Section 2 (k) (v).
- (c) A ship in a wet dock for some purposes. (1902) 1. K. B. 204.
- (d) The Engine house used for supplying light and power to a work house. (1903) 2 K. B. 483.
- (e) A factory used for the manufacture of waste cotton into half-stuff which is afterwards conveyed to another factory to be converted into paper. (10 L. T. 616. and 9 L.T. 382).
- (d) Gurhal Ghar (1930 Bom. 162).
- (e) Railway workshop. (1929 Lah. 573.)
- (f) Laundry attached to a public Institution. (106 L. T. 809.)

The following have been held *not* to be factories :—

- (a) Premises where beer-bottles are washed by manual labour. 84 L. T. 599.
- (b) First floor used as stock room, where the ground floor is used as a shop, and the second floor as a factory for dress making. (1915) S. C. (J) 18.
- (c) A threshing machine going along a road (1901) 4 F. (Ct. of Sess) 190.
- (d) A steam engine used for grinding corn for consumption on the farm (1901). 1 K. B. 700.
- (e) A room where a fishing and boat owner employed men to mend his own nets. (1906) 70 J. P. 272.
- (f) Laundry attached to a hotel wherein hotel linen and clothes of visitors were washed.
- (g) The Cellars of a hotel where wine is stored, but bottles are also washed. In such a case the washing is merely ancillary to storage (1914) 51 Sc. L. R. 664.
- (h) Mine. (see definition).
- (i) Railway running shed. (see definition).
- (n) *Occupier*. The word occupier has the same meaning as it bears in similar enactments in England, that is a person who regulates a factory and controls the work that is done there. (20 I. C. 144.) The definition of "occupier" in the Factories Act is not an exhaustive definition and there is nothing in it which in any way limits the normal meaning of the word "occupier" as indicating a person who is in actual possession and control of a factory. (1926 Bom. 57). The word occupier in general means a person who occupies the factory either by himself or his agent. He may be an

owner, he may be a lessee or even a mere licensee, but he must have the right to occupy the property and dictate how it is to be managed. (1933 Nag. 100 and 1931 Bom. 308). A mukadam is really a foreman and a servant of the factory. He cannot be regarded as an occupier. (1933 Nag. 100). There is nothing in the Act to make the mere successor in-office of a person, who has given a notice under section 7, as an occupier himself. (10 Bom. L.R. 38). Similarly the manager of a factory, who is residing in a part of the premises in which the factory is situated, is not an occupier of the factory under the Indian factories Act. (7 Bom. L. R. 454).

- (o) *Managing Agents.* The phrase Managing Agents in the definition does not have any limited technical meaning but denotes simply an agent who manages the factory. (167 I.C. 445.) *Managing Agent* means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an *agreement* with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement and includes any person, firm or company occupying such position by whatever name called:

Explanation :—If a person occupying the position of a managing agents calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purpose of this Act (Section 2 (9A) Indian Companies Act.)

3. References to time of day.—In this Act references to time of day are references to Indian Standard time, being five and a half hours ahead of Greenwich Mean Time :

Provided that for any area in which Indian Standard Time is not ordinarily observed the Provincial Government may make rules—

- (a) specifying the area,
- (b) defining the local mean time ordinarily observed therein, and
- (c) permitting such time to be observed in all or any of the factories situated in the area.

4. Power to declare departments to be separate factories.—The Provincial Government may, by order in writing, direct that different departments or branches

of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

5. Power to exempt during public emergency.—In any case of public emergency the Provincial Government may, by notification in the official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act for such period and subject to such conditions as it may think fit :

Provided that no such notification shall be made for a period exceeding three months at a time.

Public emergency. War, riots, civil commotion, floods, fire, famines are some of the instances of public emergency.

The opinion of the Provincial Government regarding existence of public emergency is final and the court cannot substitute its own opinion for that of the government.

6. Approval, licensing and registration of factories.—(1) The Provincial Government may make rules—

- (a) requiring the previous permission in writing of the Provincial Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories ;
- (b) requiring for the purpose of considering applications for such permission the submission of plans and specifications ;
- (c) prescribing the nature of such plans and specifications and by whom they shall be certified ;
- (d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences ;
- (e) requiring that no licence shall be granted or renewed unless the notice specified in Section 7 has been given.

(2) If on an application for permission referred to in Clause (a) of sub-section (1) accompanied by the plans and specifications required by the rules made under

Clause (b) of that sub-section, sent to the Provincial Government or Chief Inspector by registered post, no order is communicated to the applicant within three months from the date on which it is so sent, the permission applied for in the said application shall be deemed to have been granted.

(3) Where a Provincial Government or a Chief Inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of a factory, the applicant may within thirty days of the date of such refusal appeal to the Central Government if the decision appealed from was of the Provincial Government and to the Provincial Government in any other case.

Explanation.—A factory shall not be deemed to be extended within the meaning of this section by reason only of the replacement of any plant or machinery, or within such limits as may be prescribed of the addition of any plant or machinery.

Object. This is a new section. As designs of most of the factory buildings and layout of machinery have been found unsatisfactory and the building materials used not suited to climatic conditions of the place, which made working conditions unusually trying, this section regarding approval, licensing and registration of factories is considered very necessary. (Notes on clauses)

Building includes a temporary but substantial structure (1905) 1 K. B. 343 OA.

7. Notice by occupier.—(1) The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

- (a) the name and situation of the factory ;
- (b) the name and address of the occupier ;
- (c) the address to which communications relating to the factory may be sent ;
- (d) the nature of the manufacturing process—
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act, and

- (ii) to be carried on in the factory during the next twelve months in the case of all factories ;
- (e) the nature and quality of power to be used ;
- (f) the name of the manager of the factory for the purposes of this Act ;
- (g) the number of workers likely to be employed in the factory ;
- (h) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act ;
- (i) such other particulars as may be prescribed.

(2) In respect of all establishments which come within the scope of the Act for the first time, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days from the date of the commencement of this Act.

(3) Before a factory engaged in a manufacturing process which is ordinarily carried on for less than one hundred and eighty working days in the year resumes working, the occupier shall send a written notice to the Chief Inspector containing the particulars specified in sub-section (1) within thirty days before the date of the commencement of work.

(4) Whenever a new manager is appointed, the occupier shall send to the Chief Inspector a written notice within seven days from the date on which such person takes over charge.

(5) During any period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

Value of notice. This section requires the occupier of a factory to send the prescribed notice at least 15 days before he begins to occupy or use any premises as a factory. Such a notice is evidence of a representation by him that he is the occupier. But it is not

necessarily conclusive evidence. There is nothing in the Act to make the mere successor in office of a person who has given a notice as an occupier himself. (10 Bom. L. R. 38.)

Notices before 1st May 1949. The occupier of every establishment which comes within the scope of the Act for the first time shall send a written notice to the Chief Inspector under sub-section (1) within thirty days from 1st April, 1949.

Notice in case of seasonal factories. In the case of seasonal factories, i.e., factories which work ordinarily for less than one hundred and eighty working days the occupier shall send a written notice to the chief Inspector within thirty days before the date of the commencement of work.

Notice in case of New manager. Sub-section (4) makes it obligatory for the occupier to send notice of the appointment of a New Manager within seven days from the date on which such person takes over the charge. The word charge means a complete and full charge. This sub-section is not intended to cover officiating appointments, i.e., appointments, made temporarily in the absence on leave of the permanent incumbent.

Acting Managers. Where the person who has been designated as a manager does not manage the affairs of the factory, the acting manager, i.e., the person who is actually working in place of the manager, shall be deemed to be the manager for the purposes of the Act [S. 7(5)].

CHAPTER II

THE INSPECTING STAFF

8. Inspectors.—(1) The Provincial Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The Provincial Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act exercise the powers of an Inspector throughout the Province.

(3) No person shall be appointed under sub-section (1), sub-section (2) or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The Provincial Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more inspectors than one, the Provincial Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860), and shall be officially subordinate to such authority as the Provincial Government may specify in this behalf.

9. Powers of Inspectors.—Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

- (a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory ;
- (b) make examination of the premises, plant and machinery, require the production of any prescribed register and any other document relating to the factory, and take on the spot or otherwise statements of any persons which he may consider necessary for carrying out the purposes of this Act ;
- (c) exercise such other powers as may be prescribed for carrying out the purposes of this Act.

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

10. Certifying surgeons.—(1) The Provincial Government may appoint qualified medical practitioners

to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the Provincial Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the Provincial Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

(3) No person shall be appointed to be, or authorised to exercise the powers of a certifying surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes the occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory.

(4) The certifying surgeon shall carry out such duties as may be prescribed in connection with—

- (a) the examination and certification of young person under this Act :
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed ;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories where—
 - (i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein ;
 - (ii) by reason of any change in the manufacturing process carried on, or in the substances used therein or by reason of the

- adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process ;
- (iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Explanation.—In this section “qualified medical practitioner” means a person holding a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or in the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933).

CHAPTER III

HEALTH

11. Cleanliness.—(1) Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular—

- (a) accumulations of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages and disposed of in a suitable manner ;
- (b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method ;
- (c) where a floor is liable to become wet in the course of any manufacturing process to such an extent as is capable of being drained, effective means of drainage shall be provided and maintained ;
- (d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall—
 - (i) where they are painted or varnished, be repainted or revarnished at least once in every period of five years ;

- (ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed ;
 - (iii) in any other case, be kept whitewashed or colourwashed, and the whitewashing or colourwashing shall be carried out at least once in every period of fourteen months.
- (e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

(2) If, in view of the nature of the operations carried on in a factory, it is not possible for the occupier to comply with all or any of the provisions of sub-section (1), the Provincial Government may by order exempt such factory or class or description of factories from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state.

12. Disposal of wastes and effluents.—(1) Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried on therein.

(2) The Provincial Government may make rules prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.

13. Ventilation and temperature.—(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

- (a) adequate ventilation by the circulation of fresh air, and
- (b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health ;—
and in particular,—

- (i) walls and roofs shall be of such material and so designed that such temperature shall not be exceeded but kept as low as practicable ;
- (ii) where the nature of the work carried on in the factory involves, or is likely to involve, the production of excessively high temperatures, such adequate measures as are practicable shall be taken to protect the workers therefrom, by separating the process which produces such temperatures from the workroom, by insulating the hot parts or by other effective means.

(2) The Provincial Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof and direct that a thermometer shall be provided and maintained in such place and position as may be specified.

(3) If it appears to the Provincial Government that in any factory or class or description of factories excessively high temperature can be reduced by such methods as whitewashing, spraying or insulating and screening outside walls or roofs or windows, or by raising the level of the roof, or by insulating the roof either by an air-space and double roof or by the use of insulating roof materials, or by other method, it may prescribe such of these or other methods as shall be adopted in the factory.

14. Dust and fume—(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

(2) In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

Control of dust and fumes. In most cases the poisonous dust and fumes of lead and of many other materials have to be controlled at their point of origin and thus prevented from entering the air breathed by the worker. To do this successfully has taken years of experience and experiments and only those who know what has been done and the difficulties involved can give sound advice. Engineers, however good they may be in their own line, are very likely to make mistakes in this work of exhaust ventilation. It is always good policy, therefore, to call in expert ventilating engineers and to have the plans checked by the Factory Inspector.

In some of the factories in India, there is a very great risk to health due to the breathing of fine silica dust that produces the dread diseases of silicosis. The danger in factories is met in sand blasting plants, steel foundries, potteries, chipping and dressing of siliceous building material and indeed wherever siliceous material is allowed to produce dust that can be breathed. The process of blasting with sand has now been made illegal in the U K. because the sand can easily be replaced by steel shot or other abrasive, but in India in some works, sand is being used, without proper exhaust draught and even without any attempt to control the dust within the machine.¹

Likely to be injurious. It is enough to show that the dust was generated to such an extent that its tendency was necessarily to injure the worker's health in course of time. It is unnecessary to prove that any worker has sustained actual injury. (84 L. T. 54. 1901 L. Q. B. 434).

Use of internal combustion engines. Sub-section (2) prohibits the operation of stationary internal combustion engines in any factory unless the exhaust is conducted into the open air, and other internal combustion engine unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.

15. Artificial humidification.—(1) In respect of all factories in which the humidity of the air is artificially increased, the Provincial Government may

1. Adopted from Elements of Industrial Well-Being by Sir Wilfrid Garbutt.

make rules,—

- (a) prescribing standards of humidification ;
- (b) regulating the methods used for artificially increasing the humidity of the air ;
- (c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded ;
- (d) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to an Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before specified date.

16. Overcrowding.—(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1), there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least three hundred and fifty cubic feet and of a factory built after the commencement of this Act at least five hundred cubic feet of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than fourteen feet above the level of the floor of the room.

(3) If the Chief Inspector by order in writing so requires, there shall be posted in each workroom of a factory a notice specifying the maximum number of workers who may, in compliance with the provisions of this section, be employed in the room.

(4) The Chief Inspector may by order in writing exempt subject to such conditions, if any, as he may think fit to impose, any workroom from the provisions of this section, if he is satisfied that compliance therewith in respect of the room is unnecessary in the interest of the health of the workers employed therein.

17. Lighting.—(1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of Section 13 will allow, free from obstruction.

(3) In every factory effective provision shall, so far as is practicable, be made for the prevention of—

(a) glare, either directly from a source of light or by reflection from a smooth or polished surface ;

(b) the formation of shadows to such an extent as to cause eyestrain or the risk of accident to any worker.

(4) The Provincial Government may prescribe standards of sufficient and suitable lighting for factories or for any class or description of factories or for any manufacturing process.

18. Drinking water.—(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked "drinking water" in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within twenty feet of any washing place, urinal or latrine unless a shorter distance is approved in writing by the Chief Inspector: 4

(3) In every factory wherein more than two hundred and fifty workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather by effective means and for distribution thereof.

(4) In respect of all factories or any class or description of factories the Provincial Government may make rules for securing compliance with the provisions of sub-sections (1), (2) and (3) and for the examination by prescribed authorities of the supply and distribution of drinking water in factories.

19. Latrines and urinals.—(1) In every factory—

- (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at the factory ;
- (b) separate enclosed accommodation shall be provided for male and female workers ;
- (c) such accommodation shall be adequately lighted and ventilated, and no latrine or urinal shall, unless specially exempted in writing by the Chief Inspector, communicate with any workroom except through an intervening open space or ventilated passage ;
- (d) all such accommodation shall be maintained in a clean and sanitary condition at all times ;
- (e) sweepers shall be employed whose primary duty it would be to keep clean latrines, urinals and washing places.

(2) In every factory wherein more than two hundred and fifty workers are ordinarily employed—

- (a) all latrine and urinal accommodation shall be of prescribed sanitary types ;
- (b) the floors and internal walls up to a height of three feet, of the latrines and urinals and the sanitary blocks shall be laid in glazed tiles or otherwise finished to provide a smooth polished impervious surface ;
- (c) without prejudice to the provisions of clauses (d) and (e) of sub-section (1), the floors, por-

tions of the walls and blocks so laid or finished and the sanitary pans of latrines and urinals shall be thoroughly washed and cleared at least once in every seven days with suitable detergents or disinfectants or with both.

(3) The Provincial Government may prescribe the number of latrines and urinals to be provided in any factory in proportion to the numbers of male and female workers ordinarily employed therein, and provide for such further matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interest of the health of the workers employed therein.

20. Spittoons.—(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(2) The Provincial Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.

(3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

(4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

Object. "Spitting is the cause of numerous diseases. We have therefore provided that the spittoons to be provided in a factory shall be of a prescribed type and sufficient in number. Spitting anywhere except in the spittoons has specifically been made an offence." (Report of Select Committee).

Spitting when an offence. Sub-section (3) lays down that no person shall spit within the premises of a factory except in the spittoons provided for the purposes. Where, however, spittoons have not been provided as required, spitting anywhere in the premises of factory would not be an offence. Sub-section (4) is applicable also to visitors who come to the factory.

CHAPTER IV

SAFETY

21. Fencing of machinery.—(1) In every factory the following, namely,—

- (i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is in the engine house or not ;
- (ii) the headrace and tailrace of every water-wheel and water turbine ;
- (iii) any part of a stock-bar which projects beyond the head stock of a lathe ; and
- (iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely,—

(a) every part of an electric generator, a motor or rotary convertor ;

(b) every part of transmission machinery ; and

(c) every dangerous part of any other machinery, shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use :

Provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when, it being necessary to make an examination of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion, such examination or operation is made or carried out in accordance with the provisions of section 22.

(2) The Provincial Government may by rules prescribe such further precautions as it may consider necessary

in respect of any particular machinery or part thereof, or exempt, subject to such condition as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provisions of this section.

Responsibility of Occupier.¹ In the past an Inspector visited a factory and notified to the occupier that certain parts of machinery or plant were dangerous and required him to provide suitable safe-guards. This procedure tended to encourage some occupiers to leave their machines unfenced until the Inspector called and gave specific instructions in the matter. It is not, however, possible for the Inspectorate to arrange frequent visits to every individual factory, and the result has been that very serious accidents occurred on machinery which was unfenced, simply because the occupier did not consider it to be dangerous or the Inspector had not visited and directed him.

The new law changes the procedure completely and from now on, the responsibility for safety matters is placed squarely on the shoulders of the occupier. In other words, the occupier must comply with the safety provisions of the Act without waiting for an Inspector to visit and give instructions for what ought to be done.

Many occupiers emphasise the difficulty of securing the proper maintenance of guards throughout a large factory, especially when work-people are opposed or indifferent to their use, and have expressed the opinion that when guards have been provided, and the work-people told to use them the work-people themselves should be held responsible if the guards are not used.

The difficulties experienced by employers in this matter are recognised and credit is due to many of them for the useful work they have done in overcoming active opposition or passive negligence on the part of the work-people. But although the moral blame for neglect to maintain or use a guard may sometimes rest with the worker, the necessity of maintaining the legal responsibility, which is placed by the Act on the occupier, must be emphasised. The supervision of guards is a matter requiring daily attention and however large the staff of factory inspectors it is clearly impracticable for them to exercise this detailed supervision. Only persons who are in the factory from day to day can see that guards are properly maintained; and unless the employer undertakes this duty there are no means of ensuring that this important provision will be observed. Accordingly, the Act places the responsibility upon the occupier and expects him to secure compliance with the legal requirement by discipline among his employees. It should be noted, however, that the affixing of notices or the giving of perfunctory instructions does not fulfil the employer's obligation; he is required to use as much diligence to see that

1. A Guide to the Safety Provisions of the Factories Act, 1948.

guards are maintained as he naturally exercises to see that his work-people turn out satisfactory work. And, if he shows himself determined to secure the use and maintenance of guards by a persevering use of his disciplinary powers, he can effect this object.

Finally the occupier is reminded that the Inspectors are always available for consultation and in any cases of doubt or difficulty he should not hesitate to call for their assistance. They will continue as before, to pay periodical visits to every factory and at these visits they will advise as to the suitability of the guards provided, indicate dangerous parts that may have been overlooked, discuss methods of guarding particular machines and, in general, assist the occupier to secure compliance with the various requirements of the Act.

But, and this is a very important point for the occupier to note, the requirements of the Act are absolute and are in no way dependent upon previous notice or warning from the Inspector.

Fencing of Machinery.¹ In regard to the fencing of machinery the general principle is that every part of the transmission machinery and every dangerous part of other machinery must be securely fenced, unless it is in such a position, or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced. All parts of electric generators, motors, rotaries, converters and fly wheels directly connected to them, are also subject to this requirement; while all moving parts of other prime-movers, and fly-wheels directly connected to them, must be securely fenced irrespective of their position, and so must the head and tail race of a water wheel or water turbine.

Large gear wheels, pulleys, belts, etc. are obviously dangerous when in motion, but smooth polished shafting can be just as dangerous and many accidents happen because the danger is not appreciated. If loose clothing comes in contact with a shaft it will almost certainly wrap round the shaft and the wearer will be caught and whirled off his feet and either killed or seriously injured. The law requires, therefore that transmission machinery and dangerous parts of other machinery shall be securely fenced so as to protect not only the ordinary worker employed in the factory every day, but also those engaged on temporary jobs such as painting or white washing or carrying out repairs to overhead electric lights and so on.

Dangerous. The word "dangerous" has not been defined in the Act and its interpretation has been purposely left to decisions of the court. In an English case reported as (1897) 1 Q. B. 192 it was held that it meant, "machinery from which, in the ordinary course of working it, danger may reasonably be anticipated although such danger may arise by reason only of careless working or external causes." All dangerous parts of machinery should be securely

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fenced. It is for the court to decide as a question of fact whether the part where the accident occurred was a dangerous part of the machinery. Cf. (1895) 1 Q.B. 876. There is an obligation to fence if danger may reasonably be anticipated even though the danger be caused by careless working (1897) 1 Q.B. 19.

Fencing of materials or Articles in machines. The materials or articles being worked upon in a machine may, when in motion, be quite as dangerous as parts of the machine itself. For example, the stock-bar of a lathe, that is the long bar of metal which passes through the spindle of a hollow spindle lathe, presents the same danger as a revolving shaft, and a worker's clothing or hair are liable to be entangled on it, and cause serious or even fatal injuries. All these bars must now be securely fenced by enclosing them in a metal tube or by other equally effective means.¹

Scope. The obligations imposed on the owners of the factory by Section 21 of the Act are different in character. The obligations imposed by Clause IV (c) is a continuing obligation and applies at all times even when the machine is under repair, examination or exposure, and is one requiring the owners of the factory to fence all dangerous parts of their machinery in such a manner as will be capable of ensuring the safety of the workers as far as is reasonably practicable, having regard to the exigencies of such repair, examination or exposure. The obligations under other clauses applies to periods when the machinery is not under repair examination or exposure and is an obligation to maintain the fencing in an efficient state, or, in other words, in such a state as will be capable of ensuring the safety of workmen. Cf. 2. Ir. R. 509.

Only machinery in a factory is to be fenced. Where, therefore the machinery is working on a piece of ground that did not form part of a factory, no action can be brought for breach of provisions regarding fencing 91 L.T. 377.

Mode of Fencing. It is not sufficient that the machinery is fenced in the manner usual in the best factories of the district, but it must be fenced according to the best method known at the time. 24 L.T. (O.S.) 253. The machinery must be fenced so as to be equally safe whichever way the machinery is worked (1914) 79 J.P. 1.

Fencing obligatory. It is necessary to fence even though it is commercially impracticable or mechanically impossible to fence securely (1919) 2 K.B. 39.

Liability to pay damages. Where a person is injured in consequence of the occupier of a factory having failed to fence or to maintain the fencing of a machinery an action for damages will lie against the occupier notwithstanding that a penalty is imposed for breach of the statutory duty 79 L.T. 284.

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Contributory negligence is a good plea to an action for damages for injuries sustained for not fencing machinery 4 W. R. 231.

Positional Safety. A finding that the shafting is high above ground is not what is required. It must be found to be equally safe to the workmen as it would be if fenced. (1926) I.K.B 313.

22. Work on or near machinery in motion.—

(1) Where in any factory it becomes necessary to examine any part of machinery referred to in Section 21 while the machinery is in motion, or as a result of such examination, to carry out any mounting or slipping of belts, lubrication or other adjusting operation while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight fitting clothing whose name has been recorded in the register prescribed in this behalf and while he is so engaged,—

- (a) such worker shall not handle a belt at a moving pulley unless the belt is less than six inches in width and unless the belt-joint is either laced or flush with the belt;
- (2) without prejudice to any other provision of this act relating to the fencing of machinery, every set screw, bolt and key on any revolving shaft, spindle, wheel or pinion, and all spur, worm and other toothed or friction gearing in motion with which such worker would otherwise be liable to come into contact, shall be securely fenced to prevent such contact.

(2) No woman or child shall be allowed in any factory to clean, lubricate or adjust any part of the machinery while that part is in motion, or to work between moving parts, or between fixed and moving parts, of any machinery which is in motion.

(3) The Provincial Government may, by notification in the Official Gazette, prohibit, in any specified factory or class or description of factories, the cleaning, lubricating or adjusting by any person of specified parts of machinery when these parts are in motion.

Approaching unfenced machinery—Positional Safety. In the past a good deal of latitude has been allowed as respects

occasional approach to unfenced machinery in motion. Under the new Act, this will be much more strictly limited and controlled. If a part of the machinery is left unfenced, on the ground that it is safe by reason of its position effective steps must be taken by the factory occupier to prevent anyone from getting within the danger zone while the machinery is running. There is, however, an exception strictly confined to the case of a person carrying out, while the part of the machinery is in motion, an examination of the machinery which it is necessary to carry out while the machinery is in motion, or such work as the mounting or slipping of belts, lubrication or other adjustment shown by the examination to be necessary while the machinery is in motion. A person so engaged may approach the machinery for any of these purposes, if:—

- (a) all belts, screws or other projections and all gearing with which the person would otherwise be likely to come in contact are securely fenced so as to prevent such contact.
- (b) the belt to be mounted or slipped is less than 6 inches in width and the joint is either laced or flush with the belt.
- (c) the person doing the job is a specially trained adult male worker, wearing tight fitting clothing, and his name is entered in the prescribed register of workers as a person designated for such duties.
- (d) any further precautions laid down in rules made by the Provincial Government are complied with.

The exception does not, as some people may imagine, permit every kind of work to be carried out on unfenced moving machinery provided that it is done by a person as specified in paragraph (c). To make the matter clearer the following test questions should be asked in regard to any proposed operation.

1. Is it an examination which *must* be carried out while the part is in motion?

Or

2. Is it a lubrication or adjustment which is shown by such examination to be *really necessary* and *must* it be done while the part is in motion?

Or

3. Is it a lubrication of, or slipping or mounting of belts on, transmission machinery, which cannot be deferred until the machinery is stopped?

If any one of these three questions cannot be answered unreservedly in the affirmative, the operation proposed is not legal.

When an accident occurs on an unguarded or badly guarded machine, factory occupiers, and others, plead that the machine has been in use for 10, 20, or 30 years and has never previously injured

any body. The assumption appears to be that if a machine has been in use for many years without causing an injury, it cannot really be dangerous—even if eventually it has killed some body. This assumption which is contrary to commonsense and to good safety practice is also contrary to the law. What the court has to decide if an occupier is charged with a breach of section 21(1) (c), is whether at the time of the alleged offence the machinery was dangerous. If it was, its previous history does not affect the issue.¹

Cleaning etc. of machinery by women or children. The requirements of sub-section (2) are more stringent than the previous law. In future a woman or child will not be allowed to clean, lubricate or adjust any parts of machinery in motion or to work between moving parts of machinery in motion. Furthermore, the Provincial Governments have power to extend this prohibition under sub-section (3), to all persons irrespective of sex or age in any specified factory or class or description of factories.

English Case. A child under age cannot be employed to clean the fixed part of machinery in motion, as the prohibition is referred to machinery as a whole whether fixed or in motion. 74 L.T. 101 (1898) 1 Q.B. 244.

Safety of machinery under repair. Sub-section (1) (b) lays that every nut, screw, bolt and key on any revolving shaft, spindle, wheel or pinion and all spur, worm and other toothed or friction gearing in motion, shall be securely fenced to prevent contact with the person engaged in examination, repair or lubrication of any machinery in motion.

Even though the machinery is under repair it must be kept reasonably safe under the circumstances (1910) 2, L.R. 509.

23. Employment of young persons on dangerous machines.—(1) No young person shall work at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and—

- (a) has received sufficient training in work at the machine, or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the Provincial Government, being machines which in its opinion are of such a dangerous character that young persons ought not to

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work at them unless the foregoing requirements are complied with.

Training and supervision of young persons working at certain machines This important new section lays down the principle that a young person must not work at certain dangerous machines unless -

- (a) he has been fully instructed as to the dangers, arising in connection with the machine and the precautions to be observed, and
- (b) he has received sufficient training in work at the machine or is under adequate supervision by a person who has a thorough knowledge and experience of the machine

It is left to the Provincial Governments to specify the machines to which this section shall apply and in so doing they will no doubt bear in mind the many distressing accidents which young persons have had on power presses, milling machines, guillotines, platen printing machines and certain types of carding machines.

24. Striking gear and devices for cutting off power.—(1) In every factory-

- (a) Suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on to the fast pulley;

- (b) driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room :

Provided that in respect of factories in operation before the commencement of this Act, the provisions of this sub-section shall apply only to work-rooms in which electricity is used as power

Object The dangerous practice of moving running belts by hand from one pulley to another and the unexpected starting of machines because of the belt creeping from the loose to the fast pulley have caused many accidents. A recent example occurred in a leather works where large drums driven by powers and revolving

on a horizontal axis are used. A worker entered a drum to clean it and when so engaged, the drum turned and trapped his body between the edge of the opening in the drum and part of the fixed structure. His injuries were so serious that he died. Investigations showed that when the belt was on the loose pulley it could, and did in fact, overlap the fast pulley and cause the drum to revolve. The new Act requires that suitable mechanical devices must now be provided and used for moving driving belts, and they must be so constructed that they prevent the belt from creeping.¹

Belt hangers. A type of accident associated with overhead shafting is that caused by the dangerous practice of allowing belts to hang idly on a revolving shaft. Such a belt may easily lap on the shaft, and any worker in the immediate vicinity may be caught by it and dragged up around the shafting. This danger is met by a requirement in the Act that a driving belt, when not in use, shall not be allowed to rest or ride on a revolving shaft. Belt hangers or perches should therefore be provided or the shaft may be sleeved or encased so that the belt can rest on the sleeve or casing.¹

Emergency devices. It is obviously very desirable that there should be in every work-room some efficient means of cutting off the power promptly from the machinery. This may be done by fitting fast and loose pulleys, clutches or stop buttons and the provision of such stopping devices is required in every room where electricity is the motive power, and in the case of factories, registered after the date of this Act, in all rooms whatever motive power is used. If such devices had been fitted in the past, many accidents to workers engaged in replacing belts on overhead pulleys, or carrying out repairs near overhead shafting, would have been avoided or the severity of the injuries reduced.^{1a1}

25. Self-acting machines.—No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of eighteen inches from any fixed structure which is not part of the machine:

Provided that the Chief Inspector may permit the the continued use of a machine installed before the commencement of this Act which does not comply with the requirements of this section on such conditions for ensuring safety as he may think fit to impose.

Object. Sometimes a self-acting machine, such as a spinning

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mule or a metal planing machine, is so placed that when it runs outwards or inwards to its full extent there is very little space left between it and the wall, or a girder, or another machine. If a worker happens to be in that space he is likely to be trapped and severely injured, and in fact many such accidents have happened, and some have proved fatal. To reduce the risk of similar accidents the new law states that no traversing part of a self-acting machine and no material carried on it, shall be allowed to run within a distance of eighteen inches from any fixed structure, if the space over which it runs is one in which a person is liable to pass.

In the case of machines installed before the 1st April, 1949 which do not comply with this requirement, the Chief Inspector has power to permit the continued use of the machine subject to such conditions for ensuring safety as he thinks fit to impose. He might, for example, require the occupier to fence or box-in the space so that it is physically impossible for a person to pass. The emphasis here is on the words "physically impossible" and it should be carefully noted that the chief Inspector is not likely to accept a flimsy guard or barrier which could readily be removed or broken.¹

26. Casing of new machinery.—(1) In all machinery driven by power and installed in any factory after the commencement of this act.—

- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;
- (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

(2) Whoever sells or lets on hire or, as agent of a seller or hirer, causes or procures to be sold or let on hire, for use in a factory any machinery driven by power which does not comply with the provisions of subsection (1) shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(3) The Provincial Government may make rules

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applying the provisions of this section to any particular machine or class or description of machines and specifying the types of safeguards to be provided thereon.

Sale of New machinery when an offence. For some years the designers and makers of machines have recognised that proper safeguarding of dangerous parts should be embodied in the design. Unfortunately, this has not always been done. The absence of adequate guarding on new machine has often resulted in accidents to workers, and the purchasers of such machines feel that they have ground for complaint against the makers. The Act introduces a new principle, in that in the case of new machinery intended to be driven by mechanical power, certain requirements as to the sinking or guarding of set screws, gearing, etc. must be complied with. When the machine is in a factory the occupier of the factory is responsible for seeing that this is the case; but it is made an offence for any person to sell or let on hire (or as agent for the seller or hirer to cause or procure to be sold or let on hire) for use in a factory in India a machine which does not comply with the requirements.¹

27. Prohibition of employment of women and children near cotton-openers.—No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work ;

Provided that if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the Inspector may in any particular case specify in writing women and children may be employed on the side of the partition where the feed-end is situated

Case of non-compliance The provisions of this section are not complied if there is a door made in a partition between the two portions of the rooms and that room is shown to be open at a particular time, or if it is shut yet it is not locked or other effective means taken to prevent its being opened by a woman or child wishing to get into the press room. (1926 Bom. 57).

28. Hoists and lifts.—(1) In every factory—

(a) every hoist and lift shall be—

(i) of good mechanical construction, sound material and adequate strength ;

(ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the pre-

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scribed particulars of every such examination ;

- (b) every hoistway and liftway shall be sufficiently protected by an enclosure fitted with gates, and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part ;
- (c) the maximum safe working load shall be plainly marked on every hoist or lift, and no load greater than such load shall be carried thereon ;
- (d) the cage of every hoist or lift used for carrying persons shall be fitted with a gate on each side from which access is afforded to a landing ;
- (e) every gate referred to in Clause (b) or Clause (d) shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(2) The following additional requirements shall apply to hoists and lifts used for carrying persons and installed or reconstructed in a factory after the commencement of this Act, namely :—

- (a) where the cage is supported by rope or chain, there shall be at least two ropes or chains separately connected with the cage and balance weight, and each rope or chain with its attachments shall be capable of carrying the whole weight of the cage together with its maximum load ;
- (b) efficient devices shall be provided and maintained capable of supporting the cage together with its maximum load in the event of breakage of the ropes, chains or attachments ;
- (c) an efficient automatic device shall be provided and maintained to prevent the cage from over-running.

(3) The Chief Inspector may permit the continued use of a hoist or lift installed in a factory before the commencement of this Act which does not fully comply with the provisions of sub-section (1) upon such conditions for ensuring safety as he may think fit to impose.

(4) The Provincial Government may, if in respect of any class or description of hoist or lift, it is of opinion that it would be unreasonable to enforce any requirements of sub-sections (1) and (2), by order direct that such requirements shall not apply to such class or description of hoist or lift.

The New Law. Hoists and lifts are responsible for numerous accidents and the new law requires, amongst other things, that every hoist and lift should be properly constructed and maintained, be examined at least every six months by a competent person, have the hoist well-protected, and the doors for the landing openings fitted with interlocking gates; additional safe-guards, such as interlocking cage gates are required where persons are carried, whether with goods or otherwise. Provision has, however, been made for exemption to be given in certain cases from some of these requirements."¹

Newly installed hoists and lifts. Sub-section (2) lays down the additional requirements, which must be complied in respect of hoists and lifts intended for carrying persons and installed or reconstructed in a factory after 1st April, 1949.

Lifts outside the factory. The provisions contained in Section 28 are applicable to hoists and lifts in factories only.

Competent Person. See under Section 29.

29. Cranes and other lifting machinery.—(1) The following provisions shall apply in respect of cranes and all other lifting machinery (other than hoists and lifts) in any factory namely :—

- (a) every part thereof, including the working gear, whether fixed or movable, ropes and chains and anchoring and fixing appliances shall be—
 - (i) of good construction, sound material and adequate strength ;—
 - (ii) properly maintained, and shall be thoroughly examined by a competent person at least once in every period of twelve months, and a register shall be kept containing the pre-

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scribed particulars of every such examination ;

- (b) no such machinery shall be loaded beyond the safe working load which shall be plainly inscribed thereon ;
- (c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within twenty feet of that place.

(2) The Provincial Government may make rules in respect of any lifting machinery or class or description of lifting machinery in factories—

- (a) prescribing requirements to be complied with in addition to those set out in this section ;
- (b) exempting from compliance with all or any of the requirements of this section, where in its opinion such compliance is unnecessary or impracticable.

New Law. Important provisions are contained in the new Act relating to the use and maintenance of cranes and other lifting machines. Failures of parts of such machines is another source of many accidents and the New Act now lays that all parts must be of good construction and be properly maintained that they must be thoroughly examined at least once a year by a competent person and that they must not be over loaded. So many workers have been killed or injured by being struck by travelling cranes that a clause has been inserted in the Act requiring effective measures to be taken to ensure that a crane does not approach within 20 feet of any person working on or near the wheel track of the crane. Merely to warn the crane-driver is not sufficient ; stop-blocks, detonators and/or cut-outs are more likely to be effective and one or more of these methods should be used ¹

Competent Person. The question whether a person who makes an examination is competent depends on the circumstances of each case and it is not possible to give an authoritative definition. It may be said, however, that what appears to be contemplated is that the person should have such practical and theoretical knowledge and actual experience of the type of machinery and plant which he has to examine as will enable him to detect defects and weaknesses

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which it is to the purpose of the examination to discover, and to assess their importance in relation to the strength and functions of the particular plant or machinery.

While the occupier of a factory is responsible for selecting a "competent person," the Act does not prohibit a firm from appointing one of their own staff, for example, their Chief Engineer, provided, of course, that he is competent.¹

30. Revolving machinery.—(1) In every room in a factory in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

(2) The speeds indicated in notices under sub-section (1) shall not be exceeded.

(3) Effective measure shall be taken in every factory, to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, flywheel, pulley, disc or similar appliance driven by power is not exceeded.

Object. Anybody who has seen the havoc wrought by a burst fly-wheel or who has personal knowledge of an accident due to the failure of an abrasive wheel etc. will readily agree that the section of the Act dealing with revolving wheels and vessels is an important one. This section lays down that effective steps shall be taken to ensure that the safe working peripheral speed of certain wheels and vessels, such as fly wheels, discs, pulleys, baskets, abrasive wheels, grindstones, etc., shall not be exceeded. It also requires, in the case of abrasive wheels and grindstones, that a notice of the safe speed shall be permanently affixed to each machine.¹

31. Pressure plant.—(1) If in any factory any part of the plant or machinery used in a manufacturing process is operated at a pressure above atmospheric pressure effective measures shall be taken to ensure that the safe working pressure of such part is not exceeded.

(2) The Provincial Government may make rules providing for the examination and testing of any plant or machinery such as is referred to in sub-section (1)

and prescribing such other safety measures in relation thereto as may in its opinion be necessary in any factory or class or description of factories.

32. Floors, stairs, and means of access.—In every factory—

- (a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained, and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails ;
- (b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work.

33. Pits, sumps, openings in floors, etc.—In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

(2) The Provincial Government may, by order in writing, exempt, subject to such conditions as may be prescribed, any factory or class or description of factories in respect of any vessel, sump, tank, pit or opening from compliance with the provisions of this section.

Precautions against falls. Persons falling on the flat or through openings in the floor or into pits or sumps, etc., account for a large proportion of the annual total of non-machinery accidents. The provisions of this section are designed to reduce this total by requiring floors, stairs, gangways, etc., to be kept in good order and handrails to be fitted where necessary to secure safety. Pits or tanks or openings in floors which are a source of danger must be covered or securely fenced and there must be safe means of access to every place at which any person is at any time required to work.

34. Excessive weights.—(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

(2) The Provincial Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adole-

scents and children employed in factories or in any class or description of factories or in carrying on any specified process.

35. Protection of eyes.—In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or
- (b) risk to the eyes by reasons of exposure to excessive light,—

the Provincial Government may by rules require that effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of, the process.

Use of goggles. A great many accidents causing eye injuries occur in factories every year. A large proportion of these accidents arise from the use of hand tools, lathes and grinding wheels. Under this section power has been given to Provincial Governments to prescribe the provision of effective screens or suitable goggles for the protection of persons employed on certain processes or in the immediate vicinity of the processes. Very often the individual worker seems obsessed with the idea that screens and goggles, for example, are not necessary in his case. An interesting instance of this came to light recently. Two men were grinding metal articles on the two emery wheels of a double-ended grinder. One was wearing goggles but the other man's goggles were lying in a box in front of the machine. When asked why he was not wearing them like his mate, he replied, "Oh, he's only got one eye". The first man had in fact lost his eye when not wearing goggles on this grinding work.¹

36. Precautions against dangerous fumes.—(1) In any factory no person shall enter or be permitted to enter any chamber, tank, vat, pit, pipe, flue or other confined space in which dangerous fumes are likely to be present to such an extent as to involve risk of persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No portable electric light of voltage exceeding twenty-four volts shall be permitted in any factory for use inside any confined space such as is referred

to in sub-section (1), and where the fumes present are likely to be inflammable, no lamp or light other than of flame-proof construction shall be permitted to be used in such confined space.

(3) No person in any factory shall enter or be permitted to enter any confined space such as is referred to in sub-section (1) until all practicable measures have been taken to remove any fumes which may be present and to prevent any ingress of fumes and unless either—

- (a) a certificate in writing has been given by a competent person, based on a test carried out by himself, that the space is free from dangerous fumes and fit for persons to enter, or
- (b) the worker is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person standing outside the confined space.

(4) Suitable breathing apparatus, reviving apparatus and belts and ropes shall in every factory be kept ready for instant use beside any such confined space as aforesaid which any person has entered, and all such apparatus shall be periodically examined and certified by a competent person to be fit for use, and a sufficient number of persons employed in every factory shall be trained and practised in the use of all such apparatus and in the method of restoring respiration.

(5) No person shall be permitted to enter in any factory any boiler furnace, boiler flue, chamber tank, vat, pip or other confined space for the purpose of working or making any examination therein until it has been sufficiently cooled by ventilation or other wise to be safe for persons to enter.

(6) The Provincial Government may make rules prescribing the minimum dimensions of the manholes referred to in sub-section (1) and may by order in writing exempt, subject to such conditions as it may think fit to impose, any factory or class or description of factories from compliance with any of the provisions of this section.

Confined spaces where dangerous fumes are likely to be present New provisions are introduced which apply to a wide variety of places and plant, such as chambers, tanks, pits and pipes where dangerous fumes are likely to be present to such an extent as to involve the risk of persons being overcome by the fumes. Requirements are laid down as to (a) the provision of effective means of egress such as a manhole of adequate size (b) prohibiting the use, inside the space, of hand or portable electric light of voltage exceeding 24 Volts, and (c) prohibiting the use of any lamp or light, other than those of flame proof construction, if the dangerous fumes are likely to be inflammable. The Act also prohibits persons from entering such confined spaces unless certain precautions are taken, such as a) the taking of necessary steps to remove fumes and to prevent fumes from entering and (unless certain conditions are fulfilled) the wearing of a life belt and a breathing apparatus, and (b) the provision and periodical inspection of breathing apparatus, reviving apparatus, and belts and ropes, (c) the training of persons in the use of the apparatus, and in artificial respiration. Provision has been made to grant exemption in certain cases and to specify minimum dimension of manholes ^{1a}

Entry into hot chambers, etc. Sub-section (5) lays down that no person shall be permitted to enter in any hot confined space for the purpose of working or inspection until it has been sufficiently cooled by ventilation or otherwise to be safe for persons to enter.

37. Explosive or inflammable dust, gas, etc.--

(1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by--

- (a) effective enclosure of the plant or machinery used in the process,
- (b) removal or prevention of the accumulation of such dust, gas, fume or vapour ;
- (c) exclusion or effective enclosure of all possible sources of ignition.

(2) Where in any factory the plant or machinery used in a process such as is referred to in sub-section (1) is not so constructed as to withstand the probable pressure which such an explosion as aforesaid would produce, all practicable measures shall be taken to restrict the spread and effects of the explosion by the

1. Add to the Safety Provisions of the Factories Act, 1948.

provision in the plant or machinery of chokes, baffles, vents or other effective appliances.

3) Where any part of the plant or machinery in a factory contains any explosive or inflammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened except in accordance with the following provisions, namely :—

- (a) before the fastening of any joint of any pipe connected with the part or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or any such pipe shall be effectively stopped by a stop-valve or other means ;
- (b) before any such fastening as aforesaid is removed, all practicable measures shall be taken to reduce the pressure of the gas or vapour in the part or pipe to atmospheric pressure;
- (c) where any such fastening as aforesaid has been loosened or removed effective measures shall be taken to prevent any explosive or inflammable gas or vapour from entering the part or pipe until the fastening has been secured, or, as the case may be, securely replaced:

Provided that the provisions of this sub-section shall not apply in the case of plant or machinery installed in the open air.

(4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected in any factory to any welding, brazing, soldering or cutting operation which involves the application of heat unless adequate measures have first been taken to remove such substance and any fumes arising therefrom or to render such substance and fumes non-explosive or non inflammable, and no such substance shall be allowed to enter such plant, tank or vessel after any such operation until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) The Provincial Government may by rules

exempt, subject to such conditions as may be prescribed, any factory or class or description of factories from compliance with all or any of the provisions of this section.

Provision of chokes, baffles, Vents, etc. Where in any factory, gas, dust, fumes or vapours are likely to be generated in course of manufacturing process and such gas, dust, fumes or vapours are liable to explode on ignition, all practicable measures shall be taken to prevent any such explosion. At any rate all possible measures shall be taken to restrict the spread and effects of such an explosion by providing in the plant or machinery of chokes, baffles, vents or other effective appliances.

Repairs of vessels containing explosive or inflammable substances. Sub-Section (4) prescribes that adequate measures should be taken to remove all explosive or inflammable substances and any fumes arising therefrom or to render them non-explosive or non-inflammable before any repair involving application of heat to such vessel is undertaken.

38. Precautions in case of fire. —(1) Every factory shall be provided with such means of escape in case of fire as may be prescribed, and if it appears to the Inspectors that any factory is not so provided, he may serve on the manager of the factory an order in writing specifying the measures which, in his opinion should be adopted to bring the factory into conformity with the provisions of this section and any rules made thereunder, and requiring them to be carried out before a date specified in the order.

(2) In every factory the doors affording exit from any room shall not be locked or fastened so that they cannot be easily and immediately opened from the inside while any person is within the room, and all such doors, unless they are of the sliding type, shall be constructed to open outwards.

(3) In every factory, every window, door or other exit affording a means of escape in case of fire, other than the means of exit in ordinary use, shall be distinctively marked in a language understood by the majority of the workers and in red letters of adequate size or by some other effective and clearly understood sign.

(4) There shall be provided in every factory effective and clearly audible means of giving warning in case

of fire to every person employed in the factory.

(5) A free passage-way giving access to each means of escape in case of fire shall be maintained for the use of all workers in every room of a factory.

(6) Effective measures shall be taken to ensure that in every factory—

(a) wherein more than twenty workers are ordinarily employed in any place above the ground floor, or

(b) wherein explosive or highly inflammable materials are used or stored,

all the workers are familiar with the means of escape in case of fire and have been adequately trained in the routine to be followed in such case.

(7) The Provincial Government may make rules prescribing, in respect of any factory or class or description of factories, the means of escape to be provided in case of fire and the nature and amount of fire-fighting apparatus to be provided and maintained.

New Law. The law as to safety provision in case of fire is very much strengthened. The general principle is that every factory must be provided with adequate means of escape in case of fire, and that if a factory is not so provided an Inspector may serve on the manager an order specifying the measure which should be taken and requiring them to be carried out before a specified date.

Doors. Doors of rooms must not be locked or fastened so that they cannot be easily and immediately opened from the inside and, unless they are of the sliding type, they must open outwards.

Fire Exits. All exits, other than those in ordinary use, must be marked in red letters or by other effective sign.

Audible warning. Clearly audible means of giving warning in case of fire must be provided.

Free passage. Passage way to fire exits must be kept clear and free from obstruction.

Fire Instruction. Where in any factory more than twenty persons are employed in the same building above the ground floor and where in any factory explosive or highly inflammable materials are stored or used, effective steps must be taken to ensure that all the persons employed are familiar with means of escape and their use and the routine to be followed in case of fire.

Fire prevention. In a factory in which there is the possibility of fire, it is desirable to have a sprinkler installation. By this

system, the ceilings are covered with a net work of pipes fitted with water under pressure from the main and at regular intervals there are small nozzles which open at a fixed temperature and discharge water on the fire. No serious fire has occurred in any factory which has been properly fitted with Sprinklers. A manufacturer who uses these methods has the great advantage of knowing that his business will never be disorganised by a serious fire and the interest and depreciation on the Sprinkler installation are usually more than covered by the reduced premiums for fire insurance.

Scope. The words "precautions against fire" taken literally means precautions against the occurrence or outbreak of fire, and the words would not in their literal interpretation cover precautions against the consequences of fire. 1943 Bom. 5.

Compliance with Inspector's orders. A notice to the owners of a factory to construct a new staircase to connect all the floors and roof of a premises which were only partly used as a factory may not be complied where in order to do so it would be necessary to interfere with the ground floor let to tenants and which was not used as a factory. 18 T. L. R. 59. Where the compliance with the order of the factory inspector would involve an act of trespass on the premises in the occupation of third person the occupier of the factory does not render himself liable by his failure to carry out the works. 17. T.L.R. 504.

Illegal order. The notice cannot require an owner to carry out measures for providing means of escape which involve infringement of the rights of third parties. (1909) 69 L.J.Q.B. 227.

39. Power to require specifications of defective parts or tests of stability.—If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date—

- (a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or
- (b) to carry out such tests in such manner as may be specified in the order, and to inform the Inspector of the results thereof.

40 Safety of buildings and machinery.—(1) If it appears to the Inspector that any building or part of a

building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(2) If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Powers of Inspector. If it appears to an Inspector that any building, part of a building, or part of the ways, machinery or plant in a factory is or may be dangerous to human life or safety, there are three courses of action open to him :—

1. If the danger appears to be imminent he may serve on the factory manager an order in writing prohibiting its use until it has been repaired or altered.
2. If the danger appears to exist but it is not imminent he may require the factory manager to adopt certain measures before a specified date.
3. If the danger is possible he may require the factory manager to furnish drawings, specifications and other particulars or to carry out certain tests and to inform the Inspector of the result.¹

41. Power to make rules to supplement this Chapter.—The Provincial Government may make rules requiring the provision in any factory or in any class or description of factories of such further devices for securing the safety of persons employed therein as it may deem necessary.

CHAPTER V

WELFARE

42. Washing facilities.—(1) In every factory—

- (a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein ;
- (b) separate and adequately screened facilities

1. A Guide to the Safety Provisions of the Factories Act, 1948.

shall be provided for the use of male and female workers ;

- (c) such facilities shall be conveniently accessible and shall be kept clean.

(2) The Provincial Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

43. Facilities for storing and drying clothing.—

The Provincial Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

44. Facilities for sitting.—(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

(2) If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working.

(3) The Provincial Government may, by notification in the Official Gazette, declare that the provisions of sub-section (1) shall not apply to any specified factory or class or description of factories or to any specified manufacturing process.

45. First-aid appliances.—(1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one

hundred and fifty workers ordinarily employed in the factory.

(2) Nothing except the prescribed contents shall be kept in the boxes and cupboards referred to in subsection (1), and all such boxes and cupboards shall be kept in the charge of a responsible person who is trained in first-aid treatment and who shall always be available during the working hours of the factory.

(3) In every factory wherein more than five hundred workers are employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed.

46. Canteen.—(1) The Provincial Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the date by which such canteen shall be provided ;
- (b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen ;
- (c) the foodstuffs to be served therein and the charges which may be made therefor ;
- (d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen ;
- (e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under Clause (c).

47. Shelters, rest rooms and lunch rooms.—(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat

meals brought by them, shall be provided and maintained for the use of the workers :

Provided that any canteen maintained in accordance with the provisions of Section 46 shall be regarded as part of the requirements of this sub section :

Provided further that where a lunch room exists no worker shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The Provincial Government may—

- (a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section ;
- (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.

48. Creches.—(1) In every factory wherein more than fifty women workers are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The Provincial Government may make rules—

- (a) prescribing the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section ;
- (b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing ;

- (c) requiring the provision in any factory of free milk or refreshment or both for such children;
- (d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals.

49. Welfare officers.—(1) In every factory where in five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The Provincial Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

50. Power to make rules to supplement this Chapter—The Provincial Government may make rules—

- (a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter;
- (b) requiring in any factory or class or description of factories that representatives of the workers employed in the factory shall be associated with the management of the welfare arrangements of the workers.

CHAPTER VI

WORKING HOURS OF ADULTS

51. Weekly hours.—No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Scope. This section is mandatory and the manager of a factory cannot require his employees to work overtime unless he has obtained the necessary permission from appropriate authorities. The fact that he has paid extra remuneration under the provision of Section 59 is no defence at all to a charge under this section. Before a person can be required to work in a factory in contravention of the provisions of Section 51 to 57 of the Act, the manager must establish to the satisfaction of the court that he has been exempted from the provisions of the said sections by a written

order of the Provincial Government or that of the Chief Inspector 1948 East Punjab High Court 15.

The manager of a factory who employs a number of workmen to work in his factory in contravention of the provisions of this section is liable to be convicted and sentenced separately in respect of each such workman. 53 I C. 933

Exemptions. See Sections 64 and 65 (2)

52. Weekly holidays.—(1) No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless—

- (a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day and
- (b) the manager of the factory has, before the said day or the substituted day under Clause (a), whichever is earlier,—
 - (i) delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and
 - (ii) displayed a notice to that effect in the factory :

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Scope. The act prohibited by this section consists in employing persons on a Sunday without giving them a compensatory holiday and without giving notice to the Inspector and putting up

notice in the place mentioned. A mere failure to put up notice of Sunday work is not an offence. A manager may be convicted under this section read with Section 92 if he employs any person on a Sunday without fulfilling all those conditions. If he violates even one of them, the offence is complete; but if he violates all of them the offence is still only one offence. 1935 Mad. 301.

Sunday a general holiday. Sunday is a general holiday under the Factories Act. A manager of a factory can require a workman to work on Sunday if he has complied with the provisions of Section 52, or has obtained exemption under Section 64. It may however be noted that workers engaged in any work which for technical reasons must be carried on continuously throughout the day are exempted from the provisions of Sections 51, 52, 53, 54, 55 and 56. [See Section 64 (2) (d)]

Exemption. See Sections 64 and 65 (2)

53. Compensatory holidays.—(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of Section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.

(2) The Provincial Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

54. Daily hours.—Subject to the provisions of Section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Scope. See under Section 51.

Work in a factory. Where the manager of an ice factory had fixed only 7½ hours a day for employees but it appeared that persons who had finished their work used to take ice to ships in the docks when required. Held that the extra work was not work done in or about the factory and that it did not fall within the prohibitory provisions of the Act. 1931 Cal. 639.

Exemptions. See Sections 64 and 65 (2)

55. Intervals for rest.—The period of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work

for more than five hours before he has had an interval for rest of at least half an hour.

Working during interval of rest. If a workman works during interval of rest for amusement he thereby renders his factory manager liable for the breach of the provisions of this section, (1898) 1 Q.B. 331. Where a workman (a child in this case) was employed during meal times in wiping the spindles of a machine in a room where the under-manager was present. Held that it could not be said that the master had used due diligence to enforce the Act by exhibiting notice against working in meal times. (94 L.T. 519.)

56. Spreadover.—The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under Section 55, they shall not spread over more than ten and a half-hours in any day :

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spreadover to twelve hours.

57. Night shifts.—Where a worker in a factory works on a shift which extends beyond midnight,—

(a) for the purposes of Sections 52 and 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends ;

(b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

58. Prohibition of overlapping shifts.—(1) Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

(2) The Provincial Government may, subject to such conditions as may be prescribed, make rules exempting any factory or class or description of factories from the provisions of sub-section (1).

59. Extra wages for overtime.—(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week,

he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) Where any workers in a factory are paid on a piece rate basis, the Provincial Government, in consultation with the employer concerned, and the representatives of the workers shall, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of wages of those workers.

(3) For the purposes of this section, "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus.

(4) The Provincial Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Scope. The manager of a factory cannot require his employees to work overtime unless he has obtained the necessary permission from the appropriate authorities (*1948 East Punjab High Court 15*)

Overtime payment. Where the usual working hours of a factory are less than nine hours in a day, no overtime payment is due for working beyond the fixed working hours, so long as the daily work does not exceed nine hours. In case it exceeds the limit of nine hours, overtime wages are payable in respect of the hours worked in excess of 9 hours.

Rate of overtime payments. The workers are now entitled to wages at the rate of twice their ordinary rate of wages in respect of overtime work. The expression "ordinary rate of wages" was amplified by the Select Committee so as to include all payments and concessions made to a worker, whether in cash or in kind except bonuses.

Limit to overtime work. See Section 64 (4).

60. Restriction on double employment.—No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

61. Notice of periods of work for adults.—(1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of Section 108, a notice of periods of work for adults, showing clearly for every day the periods during which adult workers may be required to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the following provisions of this section, and shall be such that workers working for those periods would not be working in contravention of any of the provisions of Section, 51, 52, 54, 55 and 56.

(3) Where all the adult workers in a factory are required to work during the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work during the same periods, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods during which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shifts, the manager of the factory shall fix the periods during which each relay of the work may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Provincial Government may prescribe forms of the notice required by sub-section (1) and the manner in which it shall be maintained.

(9) In the case of a factory beginning work after the commencement of this Act, a copy of the notice referred to in sub-section (1) shall be sent in duplicate to the Inspector before the day on which work is begun in the factory.

(10) Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in sub section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

Scope. The notice for the periods of work in accordance with the provisions of this section must be interpreted as referring to Indian Standard Time. If a factory worked for 15 minutes after the hours when it should have been closed in accordance with the notice for the periods of work, by allowing the factory clock to be 15 minutes behind the standard time, the manager and occupier are liable and they cannot plead the benefit of Section 117. (1938 Nag 406)

Display of wrong notice. Displaying an incorrect notice of period of work for adults is tantamount to not displaying the notice and the person concerned can be convicted for an offence under this section. (1943 Nag. 79).

Work during exempted period. Where the factory is exempt from observation of intervals of rest required by Section 55, but it was found that work was actually going on during the period shown as period of rest in the notice of periods of work maintained in the factory the proprietor and manager are guilty for infringement of the provisions of this section. (1937 Bom. 52).

Change of Hours of Work. The main object of this section is not to ensure that the manager and no one else should fix the hours of work, but that the hours should be fixed and regular. Hours of employment are to be fixed, they are not to be subject to sudden or casual alteration at any one's discretion or caprice. Where the hours fixed on the night were 12-30 a.m. to 5-30 a. m. and the mills stopped working for about 15 minutes on account of breakdown and the manager extended the closing hour to 5-45 A.M. for which he issued an order and informed the workmen and the Inspector of that change, Held that the power to change time cannot be exercised by the manager after the mill starts working on the period fixed by him. (1934 Bcm. 43).

A continuously changing system of hours is something altogether different from what is contemplated by a fixation of special hours. The former course is not permitted by the Act. (1931 Cal. 639).

Sub-section (2) now prescribes that the notice required by sub-section (1) shall be fixed *beforehand* and according to sub-section (10) no change in the system of work in a factory shall be made without notifying the Inspector beforehand.

Working outside fixed periods. Where men work during a time which is admittedly outside the time fixed for employment of each person working in the factory, the owner of the factory is guilty under Section 63. (1930 *Am.* 214).

Modification of the provisions of this Section. Section 65 empowers the Provincial Government to relax, or modify the provisions of this section, by a written order to such an extent and in such manner as it may consider fit where it is unreasonable to require that the period of work should be fixed beforehand.

62. Register of adult workers.—(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing—

- (a) the name of each adult worker in the factory ;
- (b) the nature of his work ;
- (c) the group, if any, in which he is included ;
- (d) where his group works on shifts, the relay to which he is allotted ;
- (e) such other particulars as may be prescribed ;

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

(2) The Provincial Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

Delay in posting register. Delay of a few minutes in posting attendance register is not punishable. (1943 *Ord.* 311).

Failure to produce Register. Failure to produce register of adult workers on demand is punishable. (1943 *Nag.* 79).

Supplementary Time-sheets. Section 62 is mandatory and it

makes the position clear that in the absence of an order by the Inspector, one register of all persons employed and of the hours and nature of their employment must be kept. It cannot be supplemented by a time sheet. (1934 Cal 730.) Where the register contains entries day by day but it does not contain all the particulars required by the law it cannot be said to have been maintained as required by law. (1934 Cal. 546.)

63. Hours of work to correspond with notice under Section 61 and register under Section 62.—No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

Working outside fixed hours. The manager of a factory, who employs a number of workmen to work in his mill outside the hours fixed, is liable to be convicted under this section read with Section 92. (53 I.C. 933.)

64. Power to make exempting rules.—(1) The Provincial Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this chapter, other than the provisions of Clause (b) of sub-section (1) of Section 66 and of the proviso to that sub-section, shall not apply to any person so defined.

(2) The Provincial Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed—

- (a) of workers engaged on urgent repairs, from the provisions of Sections 51, 52, 54, 55 and 56 ;
- (b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory, from the provisions of Sections 51, 54, 55 and 56 ;
- (c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for

rest required by or under Section 55, from the provisions of Sections 51, 54, 55 and 56 ;

- (d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day, from the provisions of Sections 51, 52, 54, 55 and 56 ;
- (e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day, from the provisions of Section 52 ;
- (f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons from the provisions of Section 52 ;
- (g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces from the provisions of Sections 52 and 55 ;
- (h) of workers engaged in engine-rooms or boiler-houses or in attending to power-plant or transmission machinery, from the provisions of Section 52.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of Section 61 which the Provincial Government may deem to be expedient, subject to such conditions as it may prescribe.

(4) In making rules under this section, the Provincial Government shall not exceed, except in respect of exemption under Clause (a) of sub-section (2), the following limits of work inclusive of overtime :—

- (i) the total number of hours of work in any day shall not exceed ten ;
- (ii) the total number of hours of overtime work shall not exceed fifty for any one quarter ;

Explanation.—"Quarter" means a period of three consecutive months beginning on the 1st of January, the 1st of April, the 1st of July or the 1st of October ;

- (iii) the spreadover inclusive of intervals for rest shall not exceed twelve hours in any one day.

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in Section 54 may be exceeded in order to facilitate the change of shifts

(5) Rules made under this section shall remain in force for not more than three years.

Exemption and notice of period of work. Where the factory is exempt from observation of intervals of rest but it was found that work was actually going on during the period shown as period of rest in the notice of periods of work maintained in the factory, the manager and occupier are guilty under Section 61 read with Section 92. (1937 *Bom.* 52).

It is therefore essential that the notice of period of work under Section 61 must incorporate all exemption allowed under this section.

Power to exempt. The power to grant exemptions under Section 64 vests solely in the Provincial Government, yet where the factory worked overtime on the assurance of Controller of Supplies that necessary exemptions would be granted, Held that the case was covered by Section 81 (present Section 117). (1943 *Oud.* 308.)

General Exemptions. Sub section (2) prescribes the cases in which exemption has generally been allowed to workers in factories in order to enable essential work to be carried on without any hindrance. The Provincial Governments have, however, been empowered to make rules prescribing the extent and conditions relating to such exemptions.

Limit to overtime work. The Select Committee considered it necessary to put a limit to overtime works. Accordingly the maximum limit of daily and quarterly overtime has been provided in sub-section (4). It has also been provided that the spread over shall not exceed 12 hours in any one day.

Authority of Chief Inspector to grant exemptions.

See Sub-section 65 (2)

65. Power to make exempting orders—(1) Where the Provincial Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class or description of factories should be fixed beforehand, it may, by written order, relax or modify the provisions of Section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and

subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The Provincial Government or, subject to the control of the Provincial Government, the Chief Inspector, may by written order exempt, on such conditions as it or he may deem expedient, any or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of Sections 51, 52, 54 and 56 on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to the maximum limits prescribed under-section (4) of Section 64.

(4) No factory shall be exempted under sub-section (2) for a period or periods exceeding in the aggregate three months in any year.

Authority of Chief Inspectors to grant exemptions. Sub-section (2) authorises chief Inspectors to grant exemptions to adult workers from any or all of the provisions of Sections 51, 52, 54 and 56 to enable the factory or factories to deal with an exceptional press of work. Such exemption will last for a maximum period of three months in any year but no exemption in respect of overtime work will result in exceeding the limit prescribed in sub-section (4) Section 64.

66. Further restrictions on employment of women.—(1) The provisions of this Chapter shall in their application to women in factories, be supplemented by the following further restrictions, namely :—

(a) no exemption from the provisions of Section 54 may be granted in respect of any woman ;

(b) no woman shall be employed in any factory except between the hours of 6 A.M. and 7 P.M. ;

Provided that the Provincial Government may, by notification in the Official Gazette, in respect of any class or description of factories, vary the limits laid down in Clause (b), but so that no such variation shall authorise the employment of any woman between the hours of 10 P.M. and 5 A.M.

(2) The Provincial Government may make rules providing for the exemption from the restrictions set out in sub-section (1) to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to, or deterioration in, any raw material.

(3) The rules made under sub-section (2) shall remain in force for not more than three years at a time.

Scope. Previously an owner of a factory was prohibited from employing women for night work except with the consent of the Inspector of factories and any one who did so was guilty of the infringement of the Factories Act. The Inspector had no right to issue a general prohibition against employment of women on night duty (61 I.C. 225,) but under the New Act no woman shall be employed in any factory except between the hours of 6 a.m. and 7 p.m. which period may be varied to 5 a.m. to 10 p.m. by the Provincial Governments.

Working in Prohibited hours. Women voluntarily dusting and otherwise regulating their spinning looms for their own satisfaction and comfort in accordance with a practice known to the occupier of a factory before the fixed time, cannot be held to have been employed before the statutory hour. 6F (J) 53 (Mews digest). Where the women were moving the machines for the purpose of cleaning and not for the purpose of manufacturing, the women were held not to have been employed in a manufacturing process.

(103 L.T. 879)

Employment of women between 7 p.m. and 6 a.m. The Provincial Government has been authorized under proviso to sub-section (1) to vary the limits regarding employment of women between 7 p.m. and 6 p.m. but no such variation shall authorize any employment between 10 p.m. and 5 a.m. This is quite in conformity with the I.L.O. conventions. Being a member of the I. L. O. India could not bring in any legislation which goes beyond the recommendation or conventions of the I.L.O.

Penalty in case of technical offence. Where the employment of women in contravention of the law is just a technical offence smallest fine should be imposed. (191 All. 229).

CHAPTER VII

EMPLOYMENT OF YOUNG PERSONS

67. Prohibition of employment of young children.—No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

Object. "Child labour laws have been adopted in all civilized States and are in force in England and in nearly all the Governments of Europe. They are founded on the principle that the supreme right of the State to the guardianship of children controls the natural rights of the parents when the welfare of society or of the children themselves conflicts with parental rights. The supervision and control of minors is a subject which has always been regarded as within the province of the legislative authority. How far it shall be exercised is a question of expediency which it is the province of legislature to determine." (Royal Commission).

Allowed to work. Where children were employed for sorting ground nuts in a yard close to a room where a machine was used. Held that the children were employed in a factory. (1927 *Mad.* 345.) A child doing odd jobs including sweeping floors was employed in a factory (1916) 80 J.P. 270.

68. Non-adult workers to carry tokens.—A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless—

- (a) a certificate of fitness granted with reference to him under Section 69 is in the custody of the manager of the factory, and
- (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

69. Certificates of fitness.—(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

(2) The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew--

- (a) a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work.
- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory.

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

(3) A certificate of fitness granted or renewed under sub-section (2)—

- (a) shall be valid only for a period of twelve months from the date thereof;
- (b) may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

(4) A certifying surgeon shall revoke any certificate granted or renewed under sub-section (2) if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory.

(5) Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate or the renewed thereof, state his reasons in writing for so doing.

(6) Where a certificate under this section with

reference to any young person is granted or renewed subject to such conditions as are referred to in Clause (b) of sub-section (3), the young person shall not be required or allowed to work in any factory except in accordance with those conditions.

(7) Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Examination of young persons. To avoid unnecessary work on the certifying surgeon it has been provided that he will examine only those young persons, who produce a certificate from the manager that he will be employed in his factory if found fit. (Notes on Clauses).

70 Effect of certificate of fitness granted to adolescent.—(1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult under Clause (b) of sub-section (2) of Section 69, and who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapters VI and VIII.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid Clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

71. Working hours for children.—(1) No child shall be employed or permitted to work, in any factory—

(a) for more than four and a half hours in any day;

(b) between the hours of 7 P.M. and 6 A.M.

(2) The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and each child shall be employed in only one of the relays which shall not, except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.

(3) The provisions of Section 52 shall apply also to

child workers, and no exemption from the provisions of that section may be granted in respect of any child.

(4) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.

72. Notice of periods of work for children.—(1) There shall be displayed and correctly maintained in every factory in which children are employed, in accordance with the provisions of sub-section (2) of Section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

(2) The periods shown in the notice required by sub-section (1) shall be fixed beforehand in accordance with the method laid down for adult workers in Section 61, and shall be such that children working for those periods would not be working in contravention of any of the provisions of Section 71.

(3) The provisions of sub-sections (8), (9) and (10) of Section 61 shall apply also to the notice required by sub-section (1) of this section.

73. Register of child workers.—(1) The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory, showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) the number of his certificate of fitness granted under Section 69.

(2) The Provincial Government may prescribe the form of the register of child workers, the manner in which it shall be maintained and the period for which it shall be preserved.

74. Hours of work to correspond with notice under Section 72 and register under Section 73.—No child shall be employed in any factory otherwise than in accordance with the notice of periods of work for children displayed in the factory and the entries made beforehand against his name in the register of child workers of the factory.

75. Power to require medical examination.—Where an Inspector is of opinion—

- (a) that any person working in a factory without a certificate of fitness is a young person, or
- (b) that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein—

he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be examined by a certifying surgeon, and such person or young shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under Section 69, or has been certified by the certifying surgeon examining him not to be a young person

76. Power to make rules.—The Provincial Government may make rules—

- (a) prescribing the forms of certificates of fitness to be granted under Section 69, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and renewals thereof and such duplicates ;
- (b) prescribing the physical standards to be attained by children and adolescents working in factories ;
- (c) regulating the procedure of certifying surgeons under this Chapter ;
- (d) specifying other duties which certifying surgeons may be required to perform in connection with the employment of young persons

in factories, and fixing the fees which may be charged for such duties and the persons by whom they shall be payable.

77. Certain other provisions of law not barred.—The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of the Employment of Children Act, 1938 (XXVI of 1938).

CHAPTER VIII

LEAVE WITH WAGES

78. Application of Chapter.—(1) The provisions of this Chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service ;

Provided that where such award, agreement or contract of service provides for a longer leave with wages than provided in this Chapter the worker shall be entitled only to such longer leave.

Explanation.—For the purpose of this Chapter leave shall not, except as provided in Section 79, include weekly holidays or holidays for festivals or other similar occasions.

(2) The provisions of this Chapter shall not apply to any workshop of a Federal Railway.

79. Annual leave with wages.—(1) Every worker who has completed a period of twelve months continuous service in a factory shall be allowed during the subsequent period of twelve months' leave with wages for a number of days calculated at the rate of

- (i) if an adult, one day for every twenty days of work performed by him during the previous period of twelve months subject to a minimum of ten days, and
- (ii) if a child, one day for every fifteen days of work performed by him during the previous period of twelve months subject to a minimum of fourteen days ;

Provided that a period of leave shall be inclusive of any holiday which may occur during such period ;

Provided further that where the employment of a worker who has completed a period of four months' continuous service in a factory is terminated before he has completed a period of twelve months' continuous service, he shall be deemed to have become entitled to leave for the number of days which bears to the number of days specified in this sub-section the same proportion as the period of his continuous service bears to the continuous service of twelve months and the occupier of the factory shall pay to him the amount payable under Section 80 in respect of the leave to which he is deemed to have become entitled.

(2) If a worker does not in any one such period of twelve months take the whole of the leave allowed to him under sub-section (1), any leave not taken by him shall be added to the leave to be allowed to him under that sub-section in the succeeding period of twelve months :

Provided that the total number of days of leave which may be carried forward to a succeeding period shall not exceed fifteen in the case of an adult or twenty in the case of a child :

Provided further that a worker who has applied for leave with wages but has not been given such leave in accordance with any scheme drawn up under sub-sections (4) and (5), shall be entitled to carry forward the unavailed leave without any limit.

(3) A worker may in any such period of twelve months apply in writing to the manager of the factory, not less than fifteen full working days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof, allowable to him during that period under sub-section (1) and (2) :

Provided that the number of instalments in which the leave is proposed to be taken shall not exceed three :

Provided further that the application shall be made not less than thirty full working days before the

date on which the worker wishes his leave to begin, if he is employed in a public utility service as defined in Clause (n) of Section 2 of the Industrial Disputes Act, 1947 (XIV of 1947).

(4) If, for the purpose of ensuring the continuity of work, in a factory, the occupier or manager of the factory, in agreement with the Works Committee of the factory constituted under Section 3 of the Industrial Disputes Act, 1947 (XIV of 1947) or a similar committee constituted under any other Act, or if there is no such Works Committee or a similar committee in the factory the occupier or the manager of the factory in agreement with the representatives of the workers therein chosen in the prescribed manner, may lodge with the Chief Inspector a scheme in writing whereby the leave allowable under this section may be regulated.

(5) A scheme lodged under sub-section (4) shall be posted in convenient places in the factory and shall be in force for a period of twelve months from the date on which it is lodged with the Chief Inspector, and may thereafter be renewed, with or without modification, for a further period of twelve months at a time, by the manager in agreement with the Works Committee or a similar committee or, as the case may be, by the manager of the factory in agreement with the representatives of the workers as specified in sub-section (4).

(6) An application for leave which does not contravene the provisions of sub-section (3) shall not be refused unless the refusal is in accordance with a scheme for the time being in operation under sub-sections (4) and (5).

(7) If a worker entitled to leave under sub-sections (1) and (2) is discharged from the factory before he has taken the entire leave to which he is entitled, or if, having applied for and having not been granted such leave, he quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable under Section 80 in respect of the leave not taken and such payment shall be made before the

expiry of the second working day after the day on which his employment is terminated.

Explanation 1.—For the purposes of this section a worker shall be deemed to have completed a period of continuous service in a factory, notwithstanding any interruption in service during that period brought about by—

- (i) sickness, accident or authorised leave not exceeding in the aggregate one-sixth of the period, or
- (ii) a strike which is not an illegal strike or a lock out, or
- (iii) one or more periods of involuntary unemployment not exceeding in the aggregate one-twelfth of the period, or
- (iv) leave admissible or granted under any other law.

Explanation 2.—“Authorised leave” shall include any casual absence due to any reasonable cause :

Provided that the worker within a week from the commencement of the absence gives the reasons for the absence in writing to the manager of the factory, and may include periods of unauthorised leave, not exceeding in the aggregate one-thirty-sixth of the period of continuous service, but shall not include any weekly holiday allowed under Section 52 which occurs at the beginning or end of an interruption brought about by the leave.

Explanation 3.—“Illegal strike” means a strike which is illegal within the meaning of Section 24 of the Industrial Disputes Act, 1947 (XIV of 1947) or of any other law for the time being in force relating to industrial disputes.

80. Wages during leave period.—For the leave allowed to him under Section 79 a worker shall be paid at a rate equal to the daily average of his total full-time earnings, exclusive of any overtime earnings and bonus, but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the sale, by

the employer, of foodgrains and¹ other articles at concessional rates, for the days on which he worked during the month immediately preceding his leave.

81. Payment in advance in certain cases.—A worker who has been allowed leave for not less than four days in the case of an adult and five days in the case of a child under Section 79 shall, before his leave begins, be paid the wages due for the period of the leave allowed.

82. Power of Inspector to act for worker.—Any Inspector may institute proceedings on behalf of any workers to recover any sum required to be paid by an employer under this Chapter which the employer has not paid.

83. Power to make rules.—The Provincial Government may prescribe the keeping by managers of factories of registers showing such particulars as may be prescribed and requiring such registers to be made available for examination by Inspectors.

84. Power to exempt factories.—Where the Provincial Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion are not less favourable than those for which this Chapter makes provision, it may, by written order, exempt the factory from all or any of the provisions of this Chapter, subject to such conditions as may be specified in the order.

CHAPTER IX

SPECIAL PROVISIONS

85. Power to apply the Act to certain premises.—
(1) The Provincial Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that—

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

- (ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner :

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Explanation — For the purposes of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

86. Power to exempt public institutions.—The Provincial Government may exempt, subject to such conditions as it may consider necessary, any workshop or workplace where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training or reformation, from all or any of the provisions of this Act :

Provided that no exemption shall be granted from the provisions relating to hours of work and holidays, unless the persons having the control of the institution submit, for the approval of the Provincial Government, a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the persons employed in or attending the institution or who are inmates of the institution, and the Provincial Government is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of this Act.

Public Institutions. An orphan asylum maintained by subscription and donations is a "public institution" 104 LT 424. So also a school supported by private subscription (1912) 3K B. 212.

87. Dangerous operations —Where the Provincial Government is of opinion that any operation carried on in a factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or

description of factories in which the operation is carried on—

- (a) specifying the operation and declaring it to be dangerous ;
- (b) prohibiting or restricting the employment of women, adolescents or children in the operation ;
- (c) providing for the periodical medical examination of persons employed, or seeking to be employed in the operation, and prohibiting the employment of persons not certified as fit for such employment ;
- (d) providing for the protection of all persons employed in the operation or in the vicinity of the places where it is carried on ;
- (e) prohibiting, restricting or controlling the use of any specified materials or processes in connection with the operation.

88. Notice of certain accidents.—Where in any factory an accident occurs which causes death, or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such nature as may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

Scope. The duty to inform the authority under Section 88 is laid on the manager. It is primarily the manager who is to be supposed to have contravened the provisions of the Act, but both the occupier and the manager have been made responsible jointly and severally for the contravention under Section 92. (1930 *Lah. 668*).

Notice in case of injuries to several persons. The word person includes the plural and consequently where as a result of a single accident more persons than one are injured the accident cannot be split into as many persons injured. The notice contemplated is a single notice of the accident which the manager is required to submit to the authorities and therefore contravention of this rule is one offence which cannot in its turn be split up into as many offences as the number of Casualties (1930 *Lah. 668*).

Accident. Accident is an event that takes place without one's foresight or expectation, an undesigned, sudden and unforeseen occurrence of an afflictive or unfortunate character, a casualty or mishap.

Prevented from working. Where the injured persons returned to the factory without the capacity to work and soon afterwards left the factory, it was held that he did not "return to work" within the meaning of the section. (18 LT 539).

89. Notice of certain diseases.—(1) Where any worker in a factory contracts any disease specified in the Schedule, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

(2) If any medical practitioner attends on a person who is or has been employed in a factory, and who is, or is believed by the medical practitioner to be, suffering from any disease specified in the Schedule, the medical practitioner shall without delay send a report in writing to the office of the Chief Inspector stating—

- (a) the name and full postal address of the patient,
- (b) the disease from which he believes the patient to be suffering, and
- (c) the name and address of the factory in which the patient is, or was last, employed.

(3) Where the report under sub-section (2) is confirmed to the satisfaction of the Chief Inspector, by the certificate of a certifying surgeon or otherwise, that the person is suffering from a disease specified in the Schedule, he shall pay to the medical practitioner such fee as may be prescribed, and the fee so paid shall be recoverable as an arrear of land-revenue from the occupier of the factory in which the person contracted the disease.

(4) If any medical practitioner fails to comply with the provisions of sub-section (2), he shall be punishable with fine which may extend to fifty rupees.

90. Power to direct enquiry into cases of accident or disease.—(1) The Provincial Government may, if it considers it expedient so to do, appoint a competent person to inquire into the causes of any accident occurring in a factory or into any case where a disease specified in the Schedule has been, or is suspected to have been, contracted in a factory, and may also appoint one or more persons possessing legal or special

knowledge to act as assessors in such inquiry.

(2) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908). for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act ; and every person required by the person making the inquiry to furnish any information shall be deemed to be legally bound so to do within the meaning of Section 176 of the Indian Penal Code (XLV of 1860).

(3) The person holding an inquiry under this section shall make a report to the Provincial Government stating the causes of the accident, or as the case may be, disease, and any attendant circumstances, and adding any observations which he or any of the assessors may think fit to make.

(4) The Provincial Government may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.

(5) The Provincial Government may make rules for regulating the procedure at inquiries under this section.

91. Power to take samples.—(1) An Inspector may at any time during the normal working hours of a factory, after informing the occupier or manager of the factory or other person for the time being purporting to be in charge of the factory, take in the manner hereinafter provided a sufficient sample of any substance used or intended to be used in factory, such use being—

(a) in the belief of the Inspector in contravention of any of the provisions of this Act or the rules made thereunder, or

(b) in the opinion of the Inspector likely to cause bodily injury to, or injury to the health of workers in the factory.

(2) Where the Inspector takes a sample under sub-section (1) he shall, in the presence of the person informed under that sub-section unless such person wilfully absents himself, divide the sample into three portions and effectively seal and suitably mark them, and shall permit such person to add his own seal and mark thereto.

(3) The person informed as aforesaid shall, if the Inspector so requires, provide the appliances for dividing, sealing and marking the sample taken under this section.

(4) The Inspector shall—

- (a) forthwith give one portion of the sample to the person informed under sub-section (1);
- (b) forthwith send the second portion to a Government Analyst for analysis and report thereon,
- (c) retain the third portion for production to the Court before which proceedings, if any, are instituted in respect of the substance,

(5) Any document purporting to be a report under the hand of any Government Analyst upon any substance submitted to him for analysis and report under this section, may be used as evidence in any proceedings instituted in respect of the substance.

CHAPTER X

PENALTIES AND PROCEDURE

92. General penalty for offences.—Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with

both, and if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued.

Construction. As Section 41 (present Section 92) is a penal section, it ought to be construed strictly, (1921 Bom. 322). If more than one person are unlawfully employed, the manager and occupier are liable for as many offences as there are persons so employed. (1921 Bom. 322). The offence under Section 88 cannot be split up into as many offences as the number of casualties (1930 Lah. 668.)

The occupier and manager, both, or either of them, cannot be required to pay a fine which may extend to Rs. 500. But between the two they cannot be required to pay any sum exceeding Rs. 500 for each offence. (1921 Bom. 322). Separate sentences of fine on the occupier and manager in one trial are illegal. (45. IC 159.)

Technical infringements. Where the authorities are themselves doubtful about the applicability of certain provisions of the Act, but the management acts reasonably and show a genuine desire to meet any complaint and to rectify irregularities, and there is no absence of good faith, the launching of a test case in respect of technical infringements of the provisions of the Act is uncalled for, in view of the trivial character of the charges (1934 Cal. 730.)

Infringement by outsiders. Where the labourers were employed by merchants who owned the cotton and not by the factory, Held that this did not make any difference and the accused who was the manager of the factory was guilty of an offence under old Section 41 (b). (1933 Nag. 283.)

Failure to produce register. Failure to produce register of adult workers on demand is punishable under this Section (1943 Nag. 79).

Heavy penalties. Penalties against factory owners who are exploiting labour must be deterrent especially in view of the fact that detection is frequently avoided (167 I.C. 745.)

Vicarious liability. The vicarious liability of the owner and the occupier of the factory does not extend to a breach by a servant in immediate charge who fails to produce a register on demand. (1943 Nag. 79). Where the assistant manager failed to produce the register to the Inspector, Held that the manager cannot be convicted (41 C.W.N. 740).

Joint liability of manager and occupier. Both the manager and occupier are liable under Section 92. The owners or occupiers of a factory cannot relieve themselves of their responsibilities for seeing that the requirements of the Factories Act are complied with by appointing a manager. They must also see that the manager carries out his duties. It is only when the manager has acted in express disobedience of their order and they have done their best

to see that the provisions of the Act are complied with, that they can themselves escape liability. If the owners and the occupiers are ignorant persons who trusted to the knowledge and good sense of their manager that might be a reason for awarding them a smaller punishment than the manager, but it is no reason for acquitting them. (1942 *Mad.* 317). The occupier, which by definition clause includes the managing Agents, is liable jointly and severally along with the manager and they could be tried jointly. (1932 *Pat.* 188). Where both the occupier and manager are tried jointly for an offence, they cannot each be sentenced to the maximum penalty provided by the section but their joint liability to pay fine should not exceed the maximum. (58. *I.C.* 152.) Separate sentences of fine on the occupier and manager in one trial under section 41 (old) are illegal (45 *I.C.* 159).

Prosecution under the Act. Prosecutions under the Factories Act should be properly launched and properly conducted and proper evidence adduced in support of the complaint lodged by the Inspector of Factories. The complaint by an Inspector is just in the nature of an indictment. Before any one can be convicted on charges formulated in the complaint all those charges must be fully and properly proved in accordance with the procedure and the law of evidence (1934 *Cal.* 604) and the (1947 *Mad.* 223.) Indian Factories Act is a Special Act and in the absence of definite evidence to show that a boy, seven or eight years old was employed or allowed to work in contravention of the provisions of the Act, a conviction under Section 41 (a) [old] is illegal (49 *I. C.* 860). A neglect of the statutory duty is *prima-facie* evidence of negligence on the part of the employer. (1898) 2 *Q.B.* 402.

Defence. Carelessness or wilful disobedience on the part of the injured person is no defence for the employer (1898) 1 *Q.B.* 783. Contributory negligence on the part of the injured is no defence against a prosecution. An occupier is liable even if he is unaware that an offence is being committed and although he has taken steps to comply with the Act, unless under Section 101 he has brought the actual offender to justice (1898) 1 *Q. B.* 783. Where a person works in a factory in contravention of the Act and contrary to orders, the occupier is nevertheless liable (1898) 1 *Q. B.* 881. The court has no jurisdiction to hear evidence upon or decide the question of suitability or sufficiency of sanitary accommodation existing in a factory or required by the notice served upon the owner of a factory. (17 *T.L.R.* 200).

Prosecution against ex-managers and late owners. Prosecutions may be launched against a person after the termination of his ownership for offences committed when he was the owner. (1901) 2. *K.B.* 274.

93. Liability of owner of premises in certain circumstances.—Where in any premises separate buildings, or in any building separate parts of the building

or separate parts of any room therein are leased or occupied by different persons in such a manner as to constitute separate factories, the owner of the premises or building, as the case may be, shall be liable, in the stead of the occupier of the factory for any contravention in, or in respect of, any part of the premises or building which is used as a factory, of—

- (a) the provisions of Chapter III or of any rules made thereunder :
- (b) the provisions of Chapter IV or of any rules made thereunder, except in so far as they relate to plant or machinery belonging to or supplied by the occupier of the factory ;
- (c) the provisions of Chapter V or of any rules made thereunder, and in computing for the purposes of any of the provisions mentioned in this clause the number of workers employed, the whole of the premises or building, as the case may be, shall be deemed to be a single factory.

Provided that—

- (i) the provisions of this section shall not apply to, or in respect of, any building or room in the sole occupation of the occupier of a factory ;
- (ii) the aforesaid owner shall be liable for any contravention of any of the provisions of this Act or of the rules made thereunder relating to the cleanliness of sanitary conveniences only when those conveniences are used by workers of more than one occupier ;
- (iii) the aforesaid owner shall be liable for any contravention of any of the provisions of this Act or of the rules made thereunder relating to hoists and lifts, and means of escape and safety precautions in case of fire, only in so far as the said provisions relate to things under his control.

94. Enhanced penalty after previous conviction.

—If any person who has been convicted of any offence punishable under Section 92 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

95. Penalty for obstructing Inspector.—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any worker in a factory from appearing before, or being examined by an Inspector, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

96. Penalty for wrongfully disclosing results of analysis under Section 91.—Whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act, publishes or discloses to any person the results of an analysis made under Section 91, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

97. Offences by workers.—(1) Subject to the provisions of Section 111, if any worker employed in a factory contravenes any provision of this Act or any rules or orders made thereunder, imposing any duty or liability on workers, he shall be punishable with fine which may extend to twenty rupees.

(2) Where a worker is convicted of an offence punishable under sub-section (1), the occupier or manager of the factory shall not be deemed to be guilty

of an offence in respect of that contravention, unless it is proved that he failed to take all reasonable measures for its prevention.

98. Penalty for using false certificate of fitness.—Whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself under Section 70, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees or with both.

99. Penalty for permitting double employment of child.—If a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to fifty rupees, unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

Object. "As far as the parents of the child workers typical of certain industries are concerned, we realise that we are here dealing with a class wholly illiterate, exceedingly poor and only too often heavily indebted. It is inevitable that to these the child's right to its childhood and even to such education as may be available should make no appeal comparable to that of its earning capacity, however small. There would appear in their case, as in that of the employers, no course open but that of compulsion by means of legislation so framed and so applied as to achieve the necessary end with the minimum of dislocation and hardship. Yet we realise that far reaching changes which involve not only serious economic dislocation but also a radical alteration in social custom cannot be achieved successfully, if imposed too drastically and rapidly. It is, as essential to society as to industry to allow time for adjustment to new standards. If this is not done the true purpose of governmental interference is defeated, resulting either in 'paper' legislation or in legislation the very reality of which results in oppression and dislocation."

(*Report of the Royal Commission*)

100. Determination of occupier in certain cases —
(1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual

partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable :

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members, residing within the Provinces of India to be the occupier of the factory for the purposes of this Chapter, and such individual shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable :

Provided that the company may give notice to the Inspector that it has nominated a director, or in the case of a private company, a shareholder, who is resident in either case within the Provinces of India, to be the occupier of the factory for the purposes of this Chapter, and such director or shareholder, as the case may be, shall, so long as he is so resident, be deemed to be the occupier of the factory for the purposes of this Chapter, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder.

(3) Where the owner of any premises or building referred to in Section 93 is not an individual, the provisions of this section shall apply to such owner as they apply to occupiers of factories who are not individuals.

101. Exemption of occupier or manager from liability in certain cases.—Where the occupier or manager of a factory is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not

less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory, as the case may be, proves to the satisfaction of the Court—

- (a) that he has used due diligence to enforce the execution of this Act, and
- (b) that the said other person committed the offence in question without his knowledge, consent or connivance.

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory, and the occupier or manager, as the case may be, shall be discharged from any liability under this Act in respect of such offence :

Provided that in seeking to prove as aforesaid, the occupier or manager of the factory, as the case may be, may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor :

Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved, convict the occupier or manager.

Scope. The structure of this section indicates that one proceeding is split up into two proceedings and while the manager or occupier is accused of having committed an offence under this Act, he is also a complainant on his complaint against the other person or persons he has brought in. In the proceeding in which the

manager or occupier is the complainant, he is liable to be cross-examined by the other person or persons who has or have been brought before the court on his complaint. This must mean that the manager or occupier must give evidence himself in his complaint. There is no substance in the objection that the manager or occupier who initially is charged with an offence against the Act cannot go into the witness box and give evidence because he goes into the witness box not as an accused in the case originally started against him but in his own right as a complainant on his complaint against the other persons whom he has brought in (1928 Cal. 557) and (1943 Nag 243). The second complaint is merely a statutory defence to the first complaint and where the accused, on the first complaint elects to avail himself of such statutory defence and goes into the witness box, the complainant in the first complaint is at liberty to cross-examine him in order to show that the defence to the first complaint is not well founded (1940 Bom. 265) Sub-section (b) is by way of exception to the general rule that the person primarily responsible is the manager or occupier. The whole scheme of the Factories Act is to bring pressure on the controlling authority to see that the provisions which the legislature has made for the safety and welfare of employees are carried out.

(1939 Cal. 724).

Due diligence. It is open to the occupier or manager to show that he used due diligence to enforce the execution of the Act and that the offence was committed by some other person without his knowledge, consent or connivance (1938, Nag. 406). An admission of the offence by one of the accused is no proof that the other accused used due diligence to prevent the offence or that the offence was committed without his connivance (1939 Cal. 724). Where the manager appointed by the occupier of the factory was not incompetent or a low salaried man and the occupier and the manager were prosecuted, on account of their being a delay of few minutes in posting the attendance register. Held that the occupier had exercised due diligence and was protected by the provision of Section 71 (New 101).

(1943 Oudh, 311.)

Manager when not liable. A manager cannot be prosecuted for infringement of the Act which took place during his absence although the absence was not notified to the authorities as required by law for which non-compliance the occupier could be held liable.

(1934 Cal., 730).

102. Power of Court to make orders.—(1) Where the occupier or manager of a factory is convicted of an offence punishable under this Act the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the

order (which the Court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on the expiry of such period or extended period as the case may be, the order of the Court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the Court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine, as aforesaid.

103. Presumption as to employment.—If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

104. Onus as to age—(1) When any act or omission would, if a person were under a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court *prima facie* under such age, the burden shall be on the accused to prove that such person is not under such age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that worker.

105. Cognizance of offences — (1) No Court shall take cognizance of any offence under this Act except on complaint by, or with the previous sanction in writing of, an Inspector.

(2) No Court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

Power to Sanction Prosecutions. There is no reason for holding that an Inspector who refuses sanction to prosecute becomes *functus officio*, as to entail the consequences that neither he nor his successor in office can reopen the matter and grant sanction on a review of the facts subsequently. There is no question of *autrefois acquit* in such a case.

It is not the province of a criminal court to go behind the sanction granted, or to question the propriety or correctness of an order granting sanction to prosecute.

106. Limitation of prosecutions.—No Court shall take cognizance of any offence punishable under this Act unless complaint thereof is made within three months of the date on which the alleged commission of the offence came to the knowledge of an Inspector :

Provided that where the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

Scope. The rule of limitation laid down in this section is peremptory and cannot be circumvented by any consideration imported from the provisions of the Limitation Act. (1943 Nag., 243)

Where a workman was injured on 31st July owing to a lack of fencing known to the Inspector in January. Held that the occupier could be prosecuted in October, though more than three months after the lack of fencing came to the knowledge of the Inspector. The offence was not the failure to observe some section of the Act, but that some person was injured. (1898) 1Q B. 783.

CHAPTER XI

SUPPLEMENTAL.

107. Appeals.—(1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Act or the occupier of the factory may, within thirty days of the service of the order, appeal against it to the prescribed authority, and such authority may, subject to rules made in this behalf by the Provincial Government, confirm, modify or reverse the order.

(2) Subject to rules made in this behalf by the Provincial Government (which may prescribe classes of appeals which shall not be heard with the aid of assessors), the appellate authority may, or if so required in the petition of appeal shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned as may be prescribed :

Provided that if no assessor is appointed by such body before the time fixed for hearing the appeal, or if the assessor so appointed fails to attend the hearing at such time, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor or, if it thinks fit, without the aid of any assessor.

(3) Subject to such rules as the Provincial Government may make in this behalf and subject to such conditions as to partial compliance or the adoption of temporary measures as the appellate authority may in any case think fit to impose, the appellate authority may, if it thinks fit, suspend the order appealed against pending the decision of the appeal.

108. Display of notices—In addition to the notices required to be displayed in any factory by or under this Act, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder as may be prescribed and

also the name and address of the Inspector and the certifying surgeon.

(2) All notices required by or under this Act to be displayed in a factory shall be in English and in a language understood by the majority of the workers in the factory, and shall be displayed at some conspicuous and convenient place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

(3) The Chief Inspector may, by order in writing served on the manager of any factory, require that there shall be displayed in the factory any other notice or poster relating to the health, safety or welfare of the workers in the factory.

Proof of Abstracts of the Act. The abstract of the Factories Act must be continuously affixed in the factory and its removal would be a breach of the statute subjecting the manager to a penalty, and accordingly secondary evidence was admissible of the contents of the abstract. (*109 L.T. 800*).

109. Service of notices.—The Provincial Government may make rules prescribing the manner of the service of orders under this Act on owners, occupiers or managers of factories.

Form of Notice. The word in S. 18 (2) [old] “serve on the manager an order in writing” means that such an order as is referred to in form O should be served definitely on the manager of the factory and that it should specify exactly what measures the manager is to take in order to remove the danger. A mere note of a visit is not such an order as is contemplated by law (*1925 Bom. 143*).

Separate notices when unnecessary. It is unnecessary that separate notices should be served in respect of two or more separate factories in the same building and belonging to the same owner.

(*1903, 1 Ch. 362*).

110. Returns.—The Provincial Government may make rules requiring owners, occupiers or managers of factories to submit such returns, occasional or periodical, as may in its opinion be required for the purposes of this Act.

111. Obligations of workers.—(1) No worker in a factory—

(a) shall wilfully interfere with or misuse any

appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein ;

(b) shall wilfully and without reasonable cause do anything likely to endanger himself or others ; and

(c) shall wilfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

112. General power to make rules.—The Provincial Government may make rules providing for any matter which, under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purposes of this Act.

113. Powers of Centre to give directions.—The Central Government may give directions to a Provincial Government as to the carrying into execution of the provisions of this Act.

114. No charge for facilities and conveniences.—Subject to the provisions of Section 46 no fee or charge shall be realised from any worker in respect of any arrangements or facilities to be provided, or any equipments or appliances to be supplied by the occupier under the provisions of this Act.

115. Publication of rules.—All rules made under this Act shall be published in the official Gazette, and shall be subject to the condition of previous publication ; and the date to be specified under Clause (3) of Section 23 of the General Clauses Act, 1897 (X of 1897), shall be not less than three months from the date on which the draft of the proposed rules was published.

Publication of Rules. The Act comes into force on the 1st day of April 1949 and the draft of the proposed Rules under Section 115 are to be published after the commencement of the Act, i.e., after 1st day of April 1949. The Rules under the Act, have, therefore, at the earliest, to come into force, after July 1st, 1949.

Framing of Rules. The primary responsibility for the framing of Rules, is that of the Provincial Governments but the Government of India has framed model Rules for adoption by the Provincial Government with such modifications as may be considered necessary. This would result in uniformity of the Rules throughout India, as far as possible.

23. A General Clause Act (X of 1897).

Where, by any Central Act or Regulation, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely :—

- (1) The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or by laws for the information of persons likely to be affected thereby ;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the conditions with respect to previous publication so requires, in such manner as the Central Government or the Provincial Government prescribes.
- (3) there shall be published with the draft a notice specifying, a date on or after which the draft will be taken into consideration.
- (4) the authority having power to make the rules or bye-laws and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall, consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified.
- (5) the publication in the official Gazette of a rule or bye-laws purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

116. Application of Act to Government factories. Unless otherwise provided this Act shall apply to factories belonging to the Central or any Provincial Government.

117. Protection to persons acting under this Act. No suit, prosecution or other legal proceeding shall

lie against any person for anything which is in good faith done or intended to be done under this Act.

Object. This section was inserted in the Act primarily, if not entirely for the benefit of the Inspecting Staff. The manager of occupier who allows workmen to work beyond the prescribed hour is not acting or intending to act under the Act.

118. Restriction on disclosure of information.—

(1) No Inspector shall, while in service or after leaving the service, disclose otherwise than in connection with the execution, or for the purposes of, this Act any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties.

(2) Nothing in sub-section (1) shall apply to any disclosure of information made with the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including arbitration) pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report of such proceedings as aforesaid.

(3) If any Inspector contravenes the provisions of sub-section (1) he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Object. The necessity for this section arose because of the fact that the Official Secrets Act would be applicable only so long as the Inspectors continued to be in service. It was quite likely that Inspectors under the Factories Act might come to know of details of manufacturing process etc. because before permission to start a factory could be given such details would have to be furnished by the occupier or manager of the factory.

119 Amendment of Section 3, Act XXVI of 1938.
—In sub-section (3) of Section 3 of the Employment of Children Act, 1938, for the word “twelfth” the word “fourteenth” shall be substituted.

120. Repeal and savings.—The enactments set out in the Table appended to this section are hereby repealed :

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act.

TABLE
Enactments repealed

Year	No.	Short title
1934 ...	XXV ...	The Factories Act, 1934.
1944 ...	XIV ...	The Factories (Amendment) Act, 1944.
1945 ...	III ...	The Factories (Amendment) Act, 1945.
1946 ...	X ...	The Factories (Amendment) Act, 1946.
1947 ..	V ...	The Factories (Amendment) Act, 1947.

THE SCHEDULE

(See sections 89 and 90)

List of Notifiable Diseases

1. Lead poisoning, including poisoning by any preparation or compound of lead or their sequelæ.
2. Lead tetra-ethyl poisoning.
3. Phosphorus poisoning or its sequelæ.
4. Mercury poisoning or its sequelæ.
5. Manganese poisoning or its sequelæ.
6. Arsenic poisoning or its sequelæ.
7. Poisoning by nitrous fumes.
8. Carbon bisulphide poisoning.
9. Benzene poisoning, including poisoning by any of its homologues, their nitro or amido derivatives or its sequelæ.
10. Chrome ulceration or its sequelæ.
11. Anthrax.

12. Silicosis.

13. Poisoning by halogens or halogen derivatives of the hydrocarbons of the aliphatic series.

14. Pathological manifestations due to—

(a) radium or other radio-active substances ;

(b) X-rays.

15. Primary epitheliomatous cancer of the skin.

16. Toxic anæmia.

17. Toxic jaundice due to poisonous substances-

APPENDIX—I

The Rajpramukhs of Saurashtra, The United State of Matsya, The United State of Rajasthan, The United State of Vindhya Pradesh, Madhya Bharat and Patiala and East Punjab States Union, have signed an Instrument of Accession and have accepted the subject matter of the Factories Act as a matter with respect to which the Dominion Legislature may make laws for such States.¹

The names of the States comprising the Six Unions are :—

1. The United State of Matsya.

- (a) Alwar (b) Bharatpur (c) Dholpur (d) Karauli

2. The United State of Rajasthan.

- (a) Jodhpur
- (b) Jaipur
- (c) Bikaner
- (d) Jaisalmer
- (e) Banswara
- (f) Bundi
- (g) Dungarpur
- (h) Jhalawar
- (i) Kishangarh
- (j) Kotah
- (k) Partabgarh
- (l) Shahpura
- (m) Tonk
- (n) Udaipur

1. Letter No. D 2124—P/49 Dated 4th April 1949 from Ministry of States, New Delhi

3. The United State of Vindhya Pradesh

- (a) Ajaigarh
- (b) Paoni
- (c) Baraundha
- (d) Bijwar
- (e) Chhatarpur
- (f) Charkhari
- (g) Datia
- (h) Maihar
- (i) Nagod
- (j) Orchha
- (k) Panna
- (l) Rewa
- (m) Santhar
- (n) Alipura
- (o) Banka Pahari
- (p) Beri
- (q) Bhausaundha
- (r) Bihat

- (e) Bijua
- (f) Dhurwai
- (g) Gaurihar
- (v) Garrauli
- (w) Jaso
- (x) Jigm
- (y) Kamta
- (z) Rajaula
- (aa) Khaniadhana
- (ab) Kothi
- (ac) Lugasi
- (ad) Naigawan Rebai
- (ae) Pahara
- (af) Paldeo (Nayagaon)
- (ag) Sarila
- (ah) Sohawal
- (as) Taraon
- (aj) Tori—Fatehpur

4. Madhyabharat (Gwalior—Indore—Malwa Union)

- (a) Alirajpur
- (b) Barwan
- (c) Dewar (Senior)
- (d) Dewar (Junior)
- (e) Dhar
- (f) Gwalior
- (g) Indore
- (h) Jaora
- (i) Jhabua
- (j) Khilchipur
- (k) Narsingarh
- (l) Rajgarh
- (m) Ratlam
- (n) Sailana
- (o) Sitamau
- (p) Jobat
- (q) Kathiwara
- (r) Kurwai
- (s) Mathwar
- (t) Piploda

5. Patiala and East Punjab States Union

- (a) Patiala
- (b) Kapurthala
- (c) Malerkotla
- (d) Faridkot
- (e) Nabha
- (f) Jind
- (g) Nalagarh
- (h) Kahna

6. Saurashtra**221 States including**

- (a) Nawanagar
- (b) Bhavnagar
- (c) Porbandar
- (d) Dharangadhra
- (e) Morvi
- (f) Gondal
- (g) Jafraabad
- (h) Rajkot
- (i) Wankaner
- (j) Palitana
- (k) Dhrol
- (l) Chuda
- (m) Limbidi
- (n) Vadhwani
- (o) Lakhtar
- (p) Sayla
- (q) Vals
- (r) Jasdan
- (s) Amarnagar
- (t) Thana Devli
- (u) Vadia
- (v) Lathi
- (w) Muli
- (x) Bajana
- (y) Virpur
- (z) Maliya
- (aa) Kotda—Sangani
- (ab) Jetpur
- (ac) Bilkha
- (ad) Patdi
- (ae) Khirasra

**THE
PAYMENT OF WAGES ACT, 1936.**

THE PAYMENT OF WAGES (PROCEDURE) RULES, 1937

&

**United Provinces
Punjab, C.P., Behar, Bengal, Bombay and Madras
Payment of Wages Rules.**

THE PAYMENT OF WAGES ACT, 1936

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THE PAYMENT OF WAGES ACT

(ACT NO IV OF 1936)

[As modified up to the 1st May, 1937.]

An Act to regulate the payment of wages to certain classes of persons employed in industry

Preamble—Whereas it is expedient to regulate the payment of wages to certain classes of persons employed in industry ; It is hereby enacted as follows :

1. Short title, extent, commencement and application.—(1) This Act may be called the Payment of Wages Act, 1936.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(3) It shall come into force on such date as the Governor-General-in-Council may, by notification in the Gazette of India, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) The Provincial Government may, after giving three months' notice of its intention of so doing, by notification in the Official Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Statement of Objects and Reasons. In 1926, the Government of India addressed Local Governments with a view to ascertain the position with regard to the delays which occurred in the payment of wages to persons employed in industry, and the practice of imposing fines upon them. The investigation revealed the existence of abuses in both directions, and the material collected was placed before the Royal Commission of Labour which was appointed in 1929. The Commission collected further evidence on the subject and the results of their examination with their recommendations will be found on pages 216—221 and 236—241 of their report. The Government of India re-examined the subject in the light of the Commission's Report and in February, 1933, a Bill embodying the conclusions then reached was introduced and circulated for the purpose of eliciting opinion. A motion for the reference of the Bill to a Select Committee was tabled during the Delhi Session of 1933-34, but was not reached, and the Bill lapsed. The present Bill is based upon the same principles as the original Bill but has been revised throughout in the light of the criticisms received when the original Bill was circulated."¹

Principle and Scope of the Act. Perhaps the most advanced and difficult piece of social legislation attempted in India is the Payment of Wages Act, which was passed by the Central Legislature early in 1936. The Act in the first instance applies to factories and Railways but Provincial Governments are empowered to extend it to tramways or omnibus services, docks, or wharves or jetties, inland steamer vessels, mines, quarries or oil-fields; plantations; and any other class of workshops or establishments in which articles are produced, adopted or manufactured with a view to their use, transport or sale.

Applicability. The Act was brought into force with effect from the 28th March 1937.² It has been made applicable to all classes of persons in coal mines from January 15, 1948, with the exception of sub-section (4) of section 8.³

Exemptions. This Act does not apply to persons receiving Rs. 200 or more every month as wages.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context.—

(i) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act, 1934 (XV of 1934);

(ii) "industrial establishment" means any—

(a) tramway or motor omnibus service;

1. Gazette of India, 1935, Part V, page 20, dated 16 Feb., 1935.

2. Gazette of India, 1937, Part I, page 625.

3. Gazette of India, January 3, 1948, Part I, Notification No. Fas.-52, (1), dated 30th December 1947.

- (b) dock, wharf or jetty ;
 - (c) inland steam-vessel ;
 - (d) mine, quarry or oil-field ;
 - (e) plantation ;
 - (f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale ;
- (iii) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose ;
- (iv) "prescribed" means prescribed by rules made under this Act ;
- (v) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890 (IX of 1890); and
- (vi) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—
- (a) the value of any house-accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the Provincial Government.

- (b) any contribution paid by the employer to any pension fund or provident fund ;
- (c) any travelling allowance or the value of any travelling concession ;
- (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or
- (e) any gratuity payable on discharge.

Wages. The definition of *wages* is designed to include payments in kind and (with certain specified exceptions) all payments, however described, which are to be made to an employed person in consideration of his employment (Notes on Clauses).

Bonus. Wages as defined in the Act can only mean wages carried and cannot embrace potential wages. Bonus which a workman might earn but has not earned cannot form part of his wages. 42 Bom. L.R. 955.

Remuneration...which would if the terms of contract...were fulfilled be payable, means no more than remuneration payable on the fulfilment of the contract. 42 Bom. L.R. 955.

Any sum payable...by reason of the termination of employment would include compensation due and payable to an employee for termination of his contract of service.

3. Responsibility for payment of wages.—Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act :

Provided that, in the case of persons employed (otherwise than by a contractor)--

- (a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934 (XXV of 1934),
- (b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,
- (c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Responsible. The employer or other person need not pay wages personally, but is responsible for their payment. In respect of contractors, the intention is that the contractor should be responsible for payment where he undertakes actual work for the principal employer and is in charge of the labour and that the principal employer or his manager should be responsible where the contractor merely contracts for the supply of labour to the employer.¹

4. Fixation of wage-periods.—(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

5. Time of payment of wages.—(1) The wages of every person employed upon or in—

(a) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day,

after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The Provincial Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect

¹. Report of the Select Committee *vide* *Gazette of India*, 1935, Part I, dated 7th September.

of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working-day.

Weekly Payments. The Royal Commission on Labour recommended that the wages be paid to the workmen every week and this recommendation was strongly supported by the Dissenting members of the Select Committee who appended the following Minute of Dissent :—

"We are of the view that the Government of India should have accepted the recommendation for the general adoption of a system of a weekly payment made by the Royal Commission on Labour. If the immediate adoption of the system of weekly payments is regarded as not practicable, we recommend the adoption of at least a fortnightly wage payment system, wherever Trade Unions prefer it."

Payments to ex-employees Sub-section (2) prescribes that where the employment of any person is terminated, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. This sub-section, however, does not make it obligatory for the employer to pay such an employee all other dues such as provident fund, security, and other outstandings before the expiry of the second working day.

Holidays and Payments. Section 10 (1) of the General Clauses Act reads as under :—

"Where by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period, then if the court or office is closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the court or office is open."

It is clear from the above that if the office of the factory is closed on the prescribed day on account of a holiday, the payments required by or under the Act may be made on the day on which the office is open after the holidays.

Penalty. See section 20.

6. Wages to be paid in current coin or currency notes.—All wages shall be paid in current coin or currency notes or in both.

Penalty. See section 20.

7. Deductions which may be made from wages.—
(1) Notwithstanding the provisions of sub-section (2)

of section 47 of the Indian Railways Act, 1890 (IX of 1890), the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely :—

- (a) fines ;
- (b) deductions for absence from duty ;
- (c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody ; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default ;
- (d) deductions for house-accommodation supplied by the employer ;
- (e) deductions for such amenities and services supplied by the employer as the Provincial Government may, by general or special order, authorise ;

Explanation.—The word ‘services’ in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

- (f) deductions for recovery of advances or for adjustment of over-payments of wages ;
- (g) deductions of income-tax payable by the employed person ;
- (h) deductions required to be made by order of a Court or other authority competent to make such order ;
- (i) deductions for subscriptions to, and for, re-payment of advances from, any provident fund

to which the Provident Funds Act, 1925 (XIX of 1925), applies or any recognised provident fund as defined in section 38A of the Indian Income-tax Act, 1922 (XI of 1922), or any provident fund approved in this behalf by the Provincial Government during the continuance of such approval ;

- (j) deductions for payments to co-operative societies approved by the Provincial Government or to a scheme of insurance maintained by the Indian Post office; and
- (k) deductions made with the written authorisation of the employed person, in furtherance of any War Saving Scheme, approved by the Provincial Government, for the purchase of Securities of the Government of India or the Government of the United Kingdom.

Permissible deduction. "Clause 7 (2) of the Bill gives a list of the deductions which may be made from wages. This list does not include forfeiture of wages in lieu of notice and thus takes away the right which an employer now has under the terms of any special contract he may have with his workmen of deducting the amount of such forfeiture from the wages due. The question was discussed at great length by the Bombay Strike Enquiry Committee presided over by Mr. J. Fawcett, and they held that "if any permanent operative leaves service without notice he shall be liable to forfeit by way of liquidated damages at the discretion of the manager the whole or part of the wages due to him for the 14 days immediately prior to his so leaving." As far as the Bombay Mills are concerned the right of forfeiture has not been exercised except in very special circumstances, but that is no reason why it should be abolished altogether. It was argued in the Select Committee that an employer would not be penalised by the omission of this type of deduction from the list of permissible deductions from the wages, since he would have his remedy at Common Law and could sue the workmen for breach of contract. I maintain that the Common Law remedy to which the Select Committee referred, is no remedy whatsoever in the case of workman in India who, on leaving employment without notice, is more often than not, absolutely untraceable, and even if traceable, cannot be made to pay for the loss suffered by the employer owing to the breach of contract, which has taken place. In the circumstances, the best method of recovering the compensation due to the employer for the operative's failure to give the prescribed notice would be by means of a deduction from

the wages due to him.¹

Deductions for damage or loss can be made only in respect of (a) goods entrusted to an employed person for custody or (b) money for which he is required to account. It is not intended to permit deductions under this head in respect of damage or loss accruing in course of manufacturing process, e.g., in respect of spoiled cloth.²

Advances. Advances are classified under three heads :—

(1) Those made before employment begins which are recoverable only from the first wage payment. [S. 12 (a)]

(2) Those made during employment on account of wages already earned which are not subject to restriction; and

(3) Other advances made during employment which are to be subject to rules made by the Provincial Government [S. 12 (b)]

Fines. "We feel it is necessary to define the word 'fine' to avoid any misunderstanding as fines may be both direct and indirect. Fine may, therefore, be defined as any monetary loss suffered by an employee by way of deduction in the rate of pay temporarily or permanently in the same grade or scale of pay or deduction of part or the whole of gratuity or employer's contribution to the provident fund or of any allowance as a penalty."³

"The Bill contemplates a fine for bad and defective workmanship but the total fine which may be imposed on an operative in any one month is not to exceed half an anna in the rupee of his total monthly wages. This limit is very low, on account of the diversification in the production which has taken place in the Textile Industry as a result of the Noyce Committee recommendations the value of cloth at present passing through the hands of the operative is much more than it was a few years ago and the small amount of fine contemplated in the Bill would neither bear any proportion to the monetary value of the damage inflicted, nor act as a deterrent to bad or careless workmanship. This question was also discussed before the Rawson Enquiry Committee, which held that "it would be clearly unreasonable for the employer not to have power to recover compensation for damage caused by the negligence of a weaver by fine or deduction from the wages." They further stated that the limit of 2% of an operative's total earning for a month (imposed in the Mill-owners' Associations, then standing order for operatives) would be too small to cover such losses in most cases, and therefore suggested that "a separate provision should be made for fines for damaged cloth which should be fixed on a compensatory basis not exceeding the estimated loss to the mill owing to the damage."⁴

Penalty. See Section. 20.

(1) Mr. H. P. Mody's Minute of Dissent to the Select Committee report published in Gazette of India, dated 7th Sept. 1935.

(2) Notes on clauses.

(3) Minute of Dissent to Select Committee report published in Gazette of India dated 7th Sept. 1935.

(4) Minute of Dissent of Mr. H. P. Mody.

8 Fines.—(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Provincial Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omission shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half an-anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When the persons employed upon or any railway, factory or industrial establishment are

part only of a staff employed under the same management, all such realizations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Fines on children. Sub-Section (5) prescribes that no fine shall be imposed on any employed person who is under the age of fifteen years.

Recovery of fine by instalment. Sub-Section (6) prohibits the recovery of fine by instalments.

Time-limit for recovery of fines. Fines cannot be recovered after the expiry of sixty days from the day on which it was imposed [Sub-Section (6)]

Reduction of pay. In December, 1937, the N. W. Railway reduced the monthly rate of pay of an engine driver by Rs 7 for unsatisfactory work. The employee filed an application against the Railway in the Small Cause Court at Karachi for alleged deduction. The application was dismissed and the case was taken in appeal to the Chief Court, Sind. Mr. Justice Weston held that a reduction in an employee's wages by way of punishment was in contravention of the Payment of Wages Act and ordered a refund to the applicant of the amounts deducted from his wages.

Penalty. See Section 20.

9. Deductions for absence from duty.—(1) Deductions may be made under clause (b) of sub section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work :

Provided that, subject to any rules made in this behalf by the Provincial Government if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their con-

tracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice

Explanation.—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay—in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Basis for deduction. Deduction from wages for periods of absence from duty should be *pro rata* and should not bear a larger proportion than the period of absence bears to the period of duty (i.e. if the wage is Rs. 28/- for working days, the deduction for 9 days' absence must not be more than Rs. 9), provided that subject to any rules made in this behalf by the Provincial Government, if ten or more persons acting in concert absent themselves without due notice the deduction for absence for duty may be made in accordance with proviso to Sub-Section (2).

Penalty. See Section 20.

10. Deductions for damage or loss.—(1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11 Deductions for services rendered.—A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and in the

case of a deduction under the said clause (c), shall be subject to such conditions as the Provincial Government may impose.

12. Deductions for recovery of advances.— Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely : —

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling-expenses ;
- (b) recovery of advances of wages not already earned shall be subject to any rules made by the Provincial Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

13. Deductions for payments to co-operative societies and insurance schemes.— Deductions under clause (j) and clause (k) of sub-section (2) of section 7 shall be subject to such conditions as the Provincial Government may impose.

14. Inspectors.—(1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Factories Act, 1934 (XXV of 1934), shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The Provincial Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The Provincial Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter

on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860).

15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims—(1) The Provincial Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union, authorised in writing to act on his behalf or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is

entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under Section 3, or given them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person, of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter :

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

- (a) a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered:—

- (a) if the authority is a Magistrate, by the authority as, if it were a fine imposed by him as Magistrate, and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes

application in this behalf, as if it were a fine imposed by such Magistrate.

Scope. The Act furnishes a summary remedy for wages earned in an office and not paid but it does not provide for investigation of questions which concern the office itself in other words whether a man should be retained in one job or should be reverted to another job. Case of unjustified reversion is outside the scope of enquiry under section 15 (3). [4 Dominion Law Reports (Notes) 15—A]

Authority whether a Civil Court. The Authority deciding dispute under this section is *not* a court subordinate to High Court, which has therefore no jurisdiction to entertain an application in revision against a decision of the Authority 1144 Nag. 258 and 1946 All 276. But a contrary view was taken in 1946 Lah. 316 (F. B.) It was held by the Full Bench in that case that the Authority appointed under section 15 of the Payment of Wages Act is a Civil Court and subordinate to the High Court within the purview of S. 115, Civil Procedure Code. In this connection also see 1945 Nag. 94.

What is deduction. The reduction of an employee to a lower grade of pay from higher for a short period is deduction. If, however, an employer terminates his existing contract with his employee, but offers to re-employ him on lower rate, there is nothing in the Act to prevent him from doing so. In such a case no question of deduction would arise. (1941, Sind 191)

Form of Application. See Rule 3, The Payment of Wages (Procedure) Rules, 1937. Appendix I.

Authorised in Writing. The authorisation to act on behalf of an employed person shall be given in Form B prescribed in Rule 4, The Payment of Wages (Procedure) Rules, 1937. Appendix I.

Acting with the permission of the Authority. Any person desiring the permission of the Authority to act on behalf of any employed person or persons shall present to the Authority a brief written statement explaining his interest in the matter and the Authority shall record an order on the statement. [Rule 5, the Payment of Wages (Procedure) Rules, 1937, Appendix I.]

Application for Compensation only. An application for Compensation alone is not contemplated under section 15 (2) & (3). The application must be for payment of delayed wages. It is only in such an application that the Authority may pass an order for compensation along with an order for payment of delayed wages. A Magistrate has no jurisdiction to entertain an application for compensation alone. (1942 Bom. 273)

Delayed Wages. Delayed wages can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse or other. This view seems to be confirmed by the proviso to sub-section (3) in which it is stated that a

direction shall not be made when the delay in payment of wages is due to *bona fide* dispute as to the amount payable to the employed person. (1945 Lab. 195.)

Employer not a proper party. In case of a factory if a person is named as the manager of the Factory under the Factories Act, then he would be liable for the amount of wages. The Manager alone should be made party to an application for recovery of amounts as delayed wages and compensation. The liability of the employer would arise only if it is subsequently found that the whole or part of the amount could not be recovered from the Manager. In view of section 15 (3) read with sections 3 and 19 of the Act, the employer is not a proper party to an application when there is a manager appointed by the employer. (1940. Bom. 87)

16. Single application in respect of claims from unpaid group.—(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

17. Appeal.—(1) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency town before the Court of Small Causes and elsewhere before the District Court—

- (a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of Section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of Section 15 shall be final.

No Direction, no Appeal Where an application of an employee under Section 15 has been rejected, it must be taken that there was no direction within the meaning of that word in Section 17. There is nothing in the Act which provides for an appeal in such a case. *1946 Oudh. 148*. Appeals are allowed only when there has been a *direction*, which means an order to one side to make a certain payment to the other side. Where, therefore, an application or claim is rejected as time barred without entering into the merit, there is nothing in the Act which provides an appeal against such a rejection. *1943 All. 243*. But a contrary view was held in *1941 Sind 191*, where it was held that the word "direction" in Section 17 (1) must be construed as including a refusal to make a direction. An employed person has a right of appeal if his claim has been rejected *in toto* as also when his claim is allowed in part only.

Revision against the order of the District Judge. The High Court has power to revise an order passed by the District Judge in appeal under this section. *1945 Nag. 244*.

By way of Wages and Compensation. The words *by way of wages and compensation* are by way of a description and not a condition precedent for the maintainability of an appeal. It is not necessary that the sum should include the amount payable on account of compensation. *1945 Nag. 244*. Where no amount of wages is ordered to be paid, an order for compensation alone, which does not exceed Rs. 300, is not appealable. *1942 Bom. 273*.

Basis of Appeal. The right of appeal depends on the monetary value of the claim made by the applicant and not on any finding of the trial court. *1941 Sind 191*.

Final. All that sub-section (2) means is that save as provided by sub-section (1) an appeal would not lie. The word final in sub-section (2) prohibits only an appeal and not an application for revision. *1945 Nag. 94*.

18. Powers of authorities appointed under Section 15.—Every authority appointed under sub-section (1)

of Section 5 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

19. Power to recover from employer in certain cases.—When the authority referred to in Section 15 or the Court referred to in Section 17 is unable to recover from any person (other than an employer) responsible under Section 3 for the payment of wages any amount directed by such authority under Section 15 or Section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

20. Penalty for offences under the Act.—(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, Section 5 and Section 7 to 13, both inclusive, shall be punishable with fine, which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, Section 6 or Section 25 shall be punishable with fine which may extend to two hundred rupees.

21. Procedure in trial of offences.—(1) No court shall take cognizance of a complaint against any person for an offence under sub-section (1) of Section 20 unless an application in respect of the facts constituting the offence has been presented under Section 15 and has been granted wholly or in part and the authority empowered under the latter section or the Appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of Section 2 the authority empowered under Section 15 or the Appellate Court, as the case may be, shall give such person an opportunity of showing cause against

the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his fault was due to—

- (a) a *bona fide* error or *bona fide* dispute as to the amount payable to the employed person, or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 5 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under subsection (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

22. Bar of suits.—No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed—

- (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17 ; or
- (b) has formed the subject of a direction under section 15 in favour of the plaintiff ; or
- (c) has been adjudged, in any proceeding under section 15 ; not to be owed to the plaintiff; or
- (d) could have been recovered by an application under section 15.

Jurisdiction of Civil Courts. A civil court is not barred under

Section 15 read with this section from trying a suit in which the plaintiff is claiming a sum of money alleged to be due in lieu of notice after dismissal from employment, when the claim is entirely denied under Section 15. Delayed Wages, in Section 15, can only mean wages which are admittedly due, but the payment of which has been postponed on some excuse on the other. This view is supported by the proviso to sub-Section (3) of Section 15 which lays that a direction should not be made when the delay in payment of wages is due to a *bonafide* dispute as to the amount payable to the employed person. This seems to suggest that any *bonafide* disputes as to the amount payable are to be tried by the Civil Court, for otherwise there would be no authority capable of making an order for payment when the amount is in fact due. (1945 Lat. 195).

23. Contracting out.—Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

24. Application of Act to Federal Railways, Mines and Oil Fields.—The powers by this Act conferred upon the Provincial Government shall, in relation to Federal railways (within the meaning of the Government of India Act, 1935) mines and oilfields, be powers of the Central Government.

25. Display by notice of abstracts of the Act.—The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed.

Prescribed abstracts See Rule 22, Payment of Wages Rules.

26. Rule making power—(1) The Provincial Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in Sections 15 and 17.

(2) The Provincial Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

- (a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof ;
- (b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises ;
- (c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them ;
- (d) prescribe the manner of giving notice of the days on which wages will be paid ;
- (e) prescribe the authority competent to approve under sub-section (1) of Section 8, acts and omissions in respect of which fines may be imposed ;
- (f) prescribe the procedure for the imposition of fines under section 3 and for the making of the deductions referred to in Section 10 ;
- (g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of Section 9 ;
- (h) prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended ;
- (i) prescribe the extent to which advances may be made and the instalments by which they may be required with reference to Clause (b) of Section 12 ;
- (j) regulate the scales of costs which may be allowed in proceedings under this Act ;
- (k) prescribe the amount of court-fees payable in respect of any proceedings under this Act ; and
- (l) prescribe the abstracts to be contained in the notices required by Section 25. .

(4) In making any rule under this section the Provincial Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of Section 23 of the General Clauses Act, 1897, shall not be less than three months from the date on which the draft of the proposed rules was published.

APPENDIX I.

The Payment of Wages (Procedure) Rules, 1937.

1. Short Title.—These rules may be called the Payment of Wages (Procedure) Rules, 1937.

2. Definitions.—In these rules, unless there is anything repugnant in the subject or context,—

(a) “the Act” means the Payment of Wages Act (IV of 1936) ;

(b) “appeal” means an appeal under Section 17 ;

(c) “the Authority” means the authority appointed under sub-section (1) of Section 15 ;

(d) “the court” means the court mentioned in sub-section (1) of Section 17 ;

(e) “employer” includes the persons responsible for the payment of wages under Section 3 ;

(f) “Section” means a section of the Act ;

(g) “Form” means a form appended to these rules ;

(h) Words and expressions defined in the Act shall be deemed to have the same meaning as in the Act.

3. Form of Application.—Applications under sub section (2) of Section 15 by or on behalf of an employed person or group of employed persons shall be made in duplicate in Form A, Form B or Form C as the case may be, one copy of which shall bear such Court-fee as may be prescribed.

4. Authorisation.—The authorisation to act on behalf of an employed person or persons, under Section 15, shall be given by a certificate in Form D, shall be presented to the Authority hearing the application and shall form part of the record.

5. Permission to appear.—Any person desiring the permission of the Authority to act on behalf of any employed person or persons shall present to the Authority a brief written statement explaining his

interest in the matter, and the Authority shall record an order on the statement, which in the case of refusal shall include reasons for the order, and shall incorporate it in the record.

6. Presentation of documents.—(1) Applications or other documents relevant to an application may be presented in person to the Authority at any time during hours to be fixed by the Authority, or may be sent to him by registered post.

(2) The Authority shall at once endorse, or causes to be endorsed, on each document the date of the presentation or receipt, as the case may be.

7. Refusal to entertain application.—(1) The Authority may refuse to entertain an application presented under Rule 6, if after giving the applicant an opportunity of being heard, the Authority is satisfied, for reasons to be recorded in writing that:—

- (a) the applicant is not entitled to present an applicant, or
- (b) the application is barred by reason of the provisions in the provisos to sub-section (2) of Section 15, or
- (c) the applicant shows no sufficient cause for making a direction under Section 15.

8. Appearance of parties.—(1) If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

(2) If the employer or his representative fails to appear on the specified date, the Authority may proceed to hear and determine the application ex-parte.

(3) If the applicant fails to appear on the specified date, the authority may dismiss the application:

Provided that an order passed under sub-rule (2) or sub-rule (3) may be set aside and the application reheard on good cause being shown within one month

of the date of the said order, notice being served on the opposite party of the date fixed for rehearing.

9. Record of proceedings—(1) The Authority shall in all cases enter the particulars indicated in Form F and at the time of passing orders shall sign and date the Form.

(2) In a case where no appeal lies, no further record shall be necessary.

(3) In a case where an appeal lies, the authority shall record the substance of the evidence and shall append it under his signature to the record of direction in Form F.

10. Signature on forms.—Any form, other than a Record of Direction, which is required by these rules to be signed by the Authority, may be signed under his direction and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

11. Exercise of powers.—In exercising the powers of a Civil Court conferred by Section 18 the Authority shall be guided in respect of procedure by the relevant orders of the first Schedule of the Code of Civil Procedure, 1908, with such alterations as the Authority may find necessary, not affecting their substance, for adopting them to the matter before him, and save where they conflict with the express provisions of the Act or these rules.

12. Appeals.—(1) An appeal shall be preferred in duplicate in the form of a memorandum, one copy of which shall bear the prescribed Court-fee, setting forth concisely the grounds of objection to the direction and shall be accompanied by a certified copy of that direction.

(2) When an appeal is lodged a notice shall issue to the respondent in Form G.

(3) The Court after hearing the parties and after such further inquiry, if any, as it may deem necessary, may confirm, vary, or set aside the direction from which the appeal is preferred, and shall make an order

accordingly.

Appeal without copy of direction. Where a memorandum of appeal is filed with a copy of the order but without copy of the direction, the direction not having been drawn up in the prescribed form within a month, there is substantial compliance with the Rules (1945 Nag. 244).

13. Inspection of documents.—Any employed person, or any employer or his representative, or any person permitted under sub-section (2) of Section 15 to apply for a direction, shall be entitled to inspect any application, memorandum of appeal, or any other document filed with the Authority or the Court, as the case may be, in a case to which he is a party, and may obtain copies thereof on the payment of such fees as may be prescribed.

FORM A.

Form of individual Application

[See sub-section (2) of Section 15 of the Payment of Wages Act]

In the court of the Authority appointed under the Payment of Wages Act (IV of 1946) for— — — — — area.

Application No ——— of 19 — .

Between A, B, C.....Applicant.

(through ——— ——— ———
a legal practitioner
an official ofwhich
is a registered trade union

And

X Y Z..... opposite party.

The applicant states as follows :—

1. A.B.C. is a person employed $\frac{\text{in}}{\text{on}}$ the.

Factory

Railway

entitled

industrial establishment

and resides at.....

2. X Y Z, the opposite party, is the person responsible for the payment of his wages under Section 3 of the Act, and his address for the service of all notices and processes is

3 (1) The applicant's wages have not been paid for the following wage-period (1) or a sum of Rs.....
has been unlawfully deducted from his wages of..... (amount)
for the wage period (2) which ended on

(2) [Here give any further claim or explanation]

4. The applicant estimates the value of the relief sought by him at the sum of Rupees.....

5. The applicant prays that a direction may be issued under sub-section (3) of Section 15 for :—

(a) Payment of his delayed wages as estimated or such greater or lesser amount as the Authority may find to be due.

Or Refund of the amount illegally deducted

(b) Compensation amounting to.....

The applicant certifies that the statement of facts contained in this application is, to the best of his knowledge and belief accurate.

*Signature or thumb impression of
the employed person, or legal practitioner,
or official of a registered
trade union duly authorised.*

FORM B.

Form of Group Application

[See sub section (2) of Section 15 and Section 16 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act (IV of 1936), for..... area.

Application No of 19 ..

Between A.B.C. and (State the number) others..... applicants..... (through legal practitioner

an official of..... which is a registered trade Union

And

X.Y.Z.....opposite party,

The applicants state as follows —

1. The applicants whose names appear in the attached Schedule are persons employed in the factory entitled on the industrial establishment

The address of the applicants for service of all notices and processes is.....

2. X.Y.Z. the opposite party is the person responsible for the payment of wages under Section 3 of the Act, and his address for the service of all notices and processes is.....

3. The applicant's wages have not been paid for the following wage period (s) :

4. The applicants estimate the value of the relief sought by them at the sum of rupees.....

5. The applicants pray that a direction may be issued under sub section (3) of Section 15 for :—

(a) Payment of the applicant's delayed wages as estimated or such greater or lesser amount as the Authority may find to be due.

(b) Compensation amounting to.....

The applicants certify that the statement of facts contained in this application is to the best of their knowledge and belief, accurate.

Signature or thumb impression of two of the applicants, or legal practitioner or an official of a registered trade union duly authorised.

SCHEDULE.

Names of applicants :—

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

FORM C.

Form of Application by an Inspector or person permitted by the Authority or authorised to Act [See sub-Section (2) of Section 15 and section 16 of the Payment of Wages Act]

In the Court of the Authority appointed under the Payment of Wages Act, for.....area.

Application No. _____ of 19 ____ .

Between

A. B. C. [(designation) an Inspector under the Payment of Wages Act] [or a person _____ permitted by the authority _____ authorised to act under sub-Section (2) of section 15]applicant.

And

X.Y.Z.....the opposite party.

The applicant states as follows :—

1. X Y.Z., the opposite party is the person responsible under the Act for the payment of wages to the following person (s) :—

- 1.
- 2.
- 3.
- 4.

2. His address for the service of all notices and processes is
.....

3. The wages of the said person (s) due in respect of the following wage period (s) have not been paid
have been subjected to the following illegal deduction.

4. The applicant estimates the value of the relief sought for the person (s) employed at the sum of Rs.....

5. The applicant prays that a direction may be issued under sub-section (3) of Section 15 for :—

(a) Payment of the delayed wages as estimated or such greater or lesser amount as the Authority may find to be due.

Or

Refund of the amount illegally deducted.

(b) Compensation amounting to.....

The applicant certifies that the statement of facts contained in this application is to the best of his knowledge and belief accurate.

Signature.

FORM D.

Certificate of Authorisation

I/We employed person (s) hereby authorise _____
 a legal practitioner _____ to act on
 an official of _____ which is a registered trade union
 my/our behalf under Section 15, and Section 14 of the Payment of
 Wages Act (IV of 1936) in respect of the claim against _____
 on account of the delay in payment of _____ my/our wages for _____
 illegal deductions from _____

Witnesses

- 1.
- 2.
- 3.
- 4.

Signatures

- (1)
- (2)
- (3)
- (4)

I accept the authorisation

Signature.

Legal practitioner

Official of a registered trade union

FORM E.

Notice for the disposal of application.

To

Whereas under the Payment of Wages Act (IV of 1936) a claim against you has been presented to me in the application of which a copy is enclosed, you are hereby called upon to appear before me either in person, or by any person duly instructed, and able to answer all material questions relating to the application, or who shall be accompanied by some person able to answer all such questions, on the _____ day of _____ 19____ at _____ O'clock in the _____ fore _____ noon to answer the claim; and as the day fixed for after _____ your appearance is appointed for the final disposal of the application, you must be prepared to produce on that day all the witnesses upon whose evidence, and the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the application will be heard and determined in your absence.

Given under my hand and seal, this day of _____ 19__.

Seal.

Authority.

FORM F.

Record of Direction

- (1) Serial number _____
- (2) Date of the application _____
- (3) Name or names, percentage, address or addresses of the applicants, or some or all of the applicants belonging to the same unpaid group :—
- (4) Name and address of the employer :—
- (5) Amount claimed :—
 - (a) as delayed wages Rs.
 - (b) as deducted from wages Rs.
- (6) Plea of the employer and his examination (if any) :—
- (7) Finding, and, in the case of a direction under sub-section (3) or (4) of Section 15, a brief statement of the reasons therefor :—
- (8) Amount awarded
 - (a) Delayed wages _____
 - (b) Deducted wages _____
- (9) Compensation awarded _____
- (10) Penalty imposed _____
- (11) Costs awarded to _____
 - (i) Court-fee charges _____
 - (ii) Pleader's fee _____
- (iii) Witnesses expenses _____

Signed _____
 Dated _____

Note :—In cases where an appeal lies attach or a separate sheet the substance of the evidence.

Form G.

Notice to respondent of the day fixed for the hearing of the appeal under Section 17 of the Payment of Wages Act, 1936.

Appeal from the decision of the Authority for the _____ area, dated the _____ day of _____ 19 ____
 To _____

Respondent

Take notice that an appeal of which a copy is enclosed, from the decision of the Authority for _____ area has been presented by X.Y.Z. (and others) and registered in this Court, and that the _____ day of _____ 19, has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and the seal of the Court, this _____ day of _____ 19 ____.

Seal of the Court.

Judge

APPENDIX II

The **United Provinces** **Payment** Assam, Bengal, Bihar, Bombay, C. P., Madras and the Punjab of Wages Rules.

1. **Title.** These rules may be called the United Provinces' Payment of Wages Rules, 1936¹.

Changes.

(1) Substitute Assam, Bengal, Bihar, Bombay, C.P., Madras and the Punjab in case of respective Provincial Rules.

(2) In case of Assam, Bengal, Madras, Bombay and the Punjab Payment of Wages Rules substitute 1937 for the figure 1936.

(3) In the case of Assam Rules add the following :—
“They shall come into force from the 20th March, 1937”.

2. **Definitions.** In these rules, unless there is anything repugnant in the Subject or Context :—

(a) “the Act” means the Payment of Wages Act (IV of 1936)

(b) “the Authority” means the authority appointed under sub section (1) of Section 15 of the Act.

(c) “the Chief Inspector of Factories” means the Chief Inspector of Factories appointed under sub-section (2) of Section 10 of the Factories Act (XXV of 1934)¹.

(d) “the Court” means the court mentioned in sub-section (1) of Section 17 of the Act.

(e) “deduction for breach of contract” means a deduction made in accordance with the provisions of proviso to sub-section (2) of Section 9 ;

(f) “deduction for damage or loss” means a deduction made in accordance with the provisions of Clause (c) of sub-section (2) of Section 7 ;

(g) “Form” means a form appended to these rules;

(h) “Inspector” means the inspector authorised by or under Section 14 of the Act ;

1. Now see Section 8, Factories Act, 1948.

(i) " person employed " excludes all persons to the payment of whose wages the Act does not apply ;

(j) " section " means a section of the Act ;

(k) " paymaster " means an employer or other person responsible under Section 3 of the Act for the payment of wages.

(l) words and expressions defined in the Act shall be deemed to have the same meaning as in the Act.

Section 26 (3) (a).

3. Register of Fines. (1) In any factory in respect of which the employer has obtained approval under sub-section (1) of Section 8 to a list of acts and omissions in respect of which fines may be imposed, the paymaster shall maintain a Register of Fines in Form 1.

(2) At the beginning of the Register of Fines there shall be entered serially numbered the approved purpose or purposes on which the fines realized are to be expended.

(3) A voucher or receipt in respect of any amount disbursed shall be maintained and produced as and when demanded by the Inspector.

Changes

In Bihar, Punjab and Assam Rules, Sub-rule (3) should be read as under :—

When any disbursements are made from the fines realized, a deduct entry of the amount so expended shall be made in the Register of Fines and a voucher or receipt in respect of the amount shall be affixed to the Register. If more than one purpose has been approved the entry of the disbursement shall also indicate the purpose for which it is made.

In Bombay Rules Sub-rule (3) should be read as under :—

Vouchers or receipts in connection with any expenditure from the fines fund shall be produced for the scrutiny of the Inspector when required by him.

In the C. P. Rules. Sub-rule (3) should be read as under :—

When any disbursements are made from the fines realized, a deduct entry of the amount so expended shall be made in the Register of Fines, and a voucher or receipt in respect of the amount shall be obtained in duplicate, of which one copy shall be forwarded to the Chief Inspector of Factories for his information and the other copy shall be maintained by the employer and shall be avail-

able to an Inspector on demand. If more than one purpose has been approved the entry of the disbursement shall also indicate the purpose for which it is made.

In the Madras Rules. Sub-rules (2) and (3) should be read as follows :—

(2) "At the beginning of the Register of Fines, the approved purpose or purposes on which the fines realized are to be expended shall be entered and serially numbered".

(3) When any disbursements are made from the fines realized, a deduct entry of the amount so expended shall be made in the Register of Fines. The vouchers or receipts in respect of the amounts so expended shall be serially numbered and kept separately, the serial number of each voucher or receipt and the amount to which it relates being noted in the remarks column of the register. If more than one purpose has been approved the entry of the disbursement shall also indicate the purpose for which it is made.

4. Register of deductions for damage or loss. In every factory in which deductions for damages or loss are made, the paymaster shall maintain the Register required by sub-section (2) of Section 10 in Form 11.

5. Register of Wages. A Register of Wages shall be maintained in every factory and may be kept in such form as the paymaster finds convenient (including additions to Form P prescribed under Rule 97 of the United Provinces Factories Rules, 1935), but shall include the following particulars :—

(a) the gross wages earned by each person employed for each wage-period ;

(b) *all deductions made from those wages, with an indication in each case of the clause of sub-section (2) of Section 7 under which the deduction is made ;*

(c) the wages actually paid to each person employed for each wage-period.

Changes.

In the Rules of other Provinces, the following additional lines and brackets between the words "Convenient" and "but" in the first para of Rule 5 above be deleted, "(including additions to Form P prescribed under Rule 97 of the United Provinces Factories Rules, 1935)"

In the Madras Rules sub-clause (b) should be read as under :—
 "(b) the total of all deductions made from those wages ;

Note :—In the case of a plantation factory, the register may be maintained in the principal office of the plantation, but the manager thereof shall make the register available for inspection by the Inspector at the factory”.

6. Maintenance of Registers. The registers required by Rules 3, 4, 5 and 6 shall be preserved for twelve months after the date of the last entry made in them.

Changes.

In the **Bengal Rules** the following line be added between the words “shall be” and “preserved” in the above rule :—

“Maintained in the English language and shall be”.

Sections 26 (3) (b) and 26 (4).

6 A. Display of Wages Rates. In every factory a notice in Form VI in English, Hindi and Urdu shall be displayed by the paymaster in a conspicuous place at or near the entrance of each department or group of departments specifying the rates of wages payable to all classes of workers other than those holding positions of supervision or management as mentioned in Rule 28 of the United Provinces Factories Rules, 1935. When the rates of wages are revised or a new class of work introduced the necessary alterations shall be made by the paymaster in the said notice and dated.

This notice shall be preserved for a period of six months, after the date of its replacement by a new notice and shall be available to a Factory Inspector on demand for the purposes of inspection.

Changes.

Rule 6-A does not occur in the Rules of other Provinces.

Section 26 (3) (c).

7. Weights and Measures. (1) All weights, measures or weighing machines which are used in checking, or ascertaining the wages of persons employed in any factory shall be examined at least biennially by an Inspector who may prohibit the use of any weight, measure, or weighing machine which he finds to register incorrectly.

(2) If the Inspector considers that any action should be taken under the Indian Weights and Measures of

Capacity Act (XXXI of 1871), or the Indian Penal Code (XIV of 1860), he may seize the article in question and shall record his opinion and send it to the District Magistrate for such action as he may think fit.

Changes.

In the **Bombay Rules**, the above rule should be read as under:-

"Weights, Measures and weighing Machines. All weights or measures or weighing or measuring instruments which are used in checking or ascertaining the wages of persons employed in any factory shall be examined in accordance with the provisions of the **Bombay Weights and Measures Act, 1932**. If an Inspector considers that any action should be taken under the said Act, he may seize the article in question and shall report the matter with his opinion to the Inspector of Weights and Measures having jurisdiction under the said Act for necessary action.

Section 26 (3) (d)

8. Notice of dates of payment. The paymaster shall display, in a conspicuous place at or near the main entrance of the factory a notice, in English and in the language of the majority of the persons employed therein, *giving for not less than one month in advance, the days on which wages are to be paid.*

Provided that an employed person who is absent on any such day shall be paid his wages on any working day before the expiry of the third working day after the day on which a demand is made by him for the same.

Changes.

The proviso does not exist in the Rules of other Provinces.

In the **Assam Rules**, Rule No. 8 pertains to *Prescribed authority* which is reproduced as Rule No. 9 hereinafter.

In the **Bombay Rules**, substitute the following after the words "persons employed therein" :--

"Showing the days on which wages are to be paid."

In the **Punjab and Madras Rules**; substitute the words "one month" by the words "two months".

In the **Madras Rules**, read the following words for the words *"the days on which wages are to be paid"* :—

"The days on which wages will ordinarily be paid."

Section 26 (3) (e), (f) and (h)

9. Prescribed authority. *The Chief Inspector of*

Factories shall be the authority competent to approve, under sub-section (1) of Section 8, acts and omissions in respect of which fines may be imposed and, under sub-section (8) of Section 8, the purposes on which the proceeds of fines shall be expended.

Changes.

This rule is numbered 8 in the *Assam Payment of Wages Rules*.

In the **Bombay Rules**, add the following lines before the words "The Chief Inspector of Factories" :—

"In the case of persons employed by the Municipal Corporation for the City of Bombay, the Municipal Commissioner for the City of Bombay, and in all other cases."

10. Application in respect of fines : *Every employer* requiring the power to impose fines in respect of any acts and omissions on the part of employed persons shall send to the *Chief Inspector of Factories* :—

(a) a list, in English, in duplicate, clearly defining such acts and omissions ;

(b) in cases where the employer himself does not intend to be the sole person empowered to impose fines, a list, in duplicate, showing those appointments in his factory of which the incumbents may pass orders imposing fines and the class of establishment on which the incumbents of each such appointment may impose fine.

Changes.

In the **Assam Rules**, this rule is numbered nine with the words "Every employer" in line 1 substituted by the following words :—

Every person responsible for the payment of wages under Section 3 of the Act.

In the **Bombay Rules**, for the words "The Chief Inspector of Factories," substitute the following :—

"the authority appointed under Rule 9."

11. Approval of list of acts and omissions. The authority appointed under Rule 9 *on receipt of the list prescribed in Rule 10 (a) may*, after such enquiry as he considers necessary, pass orders either :—

(a) disapproving the list,

(b) approving the list either in its original form or as amended by him, in which case such list shall be considered to be an approved list :

Provided that no order disapproving or amending any list shall be passed unless the employer shall have been given an opportunity of showing cause orally or in writing why the list as submitted by him should be approved.

Changes

In the **Madras Rules**, substitute the words

"may on receipt of the list prescribed in Clause (a) of the preceding rule" for the words "*on receipt of the list prescribed in Rule 10 (a) may.*"

In the **C P. and Bombay Rules**, substitute the words "in the preceding rule" for the words "in Rule 10 (a)."

In the case of **Assam Rules**, the above Rule 11, with the modification as in case of **Bombay Rules** has been numbered as 10, with the figure 9 in second line substituted by the figure 8.

12. Posting of list. The employer shall display at or near the main entrance of the factory a copy in English, together with a *literal* translation thereof, in the language of the majority of the persons employed therein, of the list approved under Rule 11

Changes.

In case of **Madras Payment of Wages Rules**; substitute the words "correct" for the words "*Literal.*"

In the **Assam Rules**, the above rule has been numbered as 11. with the figure 10 substituted for the figure 11.

13. Persons authorised to impose fines. No fine may be imposed by any person other than an employer, or a person holding an appointment named in a list submitted under Rule 10.

Changes.

In the **Assam Rules**, the above rule has been numbered as 12 with the figure 9 substituted for the figure 10.

In the **Bengal Rules**, add the words "*Clause (b) of*" between *under* and "*Rule 10.*"

14. Procedure in imposing fines and deductions. Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss shall

explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or deduction, which it is proposed to impose, and shall take his explanation either orally in the presence of at least one other person, or in writing, as the employed person may prefer.

Changes.

In the **Assam Rules**, the above rule has been numbered as 13 and the words "and shall hear his explanation in the presence of at least one other person who shall sign the register in evidence that the requirements of this rule have been complied with" substituted for the words "and shall take his explanation, either orally in the presence of at least one other person, or in writing, as the employed person may prefer."

In the **Bengal Rules**, substitute the words "and if any such employed person has any explanation to offer in this behalf, he shall hear the employed person in the presence of at least one other person, for the words, "and shall take his explanation, either orally in the presence of at least one other person, or in writing, as the employed person may prefer."

In **Bombay, C. P., Punjab & Bihar Rules**, substitute the words "and shall hear his explanation in the presence of at least one other person" for the words "and shall take his explanation, either orally in the presence of at least one other person or in writing, as the employed person may prefer."

In the **Madras Rules**, substitute the words "and shall hear his explanation. The charge in respect of which it is proposed to impose the fine or deduction, and the explanation of the person concerned shall be reduced to writing, the signature of such person being obtained to the latter," for the words "and shall take his explanation, either orally in the presence of at least one other person, or in writing, as the employed person may prefer."

15. Information to paymaster. The person imposing a fine or directing the making of a deduction for damage or loss shall, *without unnecessary delay*, inform the paymaster of all particulars, so that the register prescribed in Rule 3 or 4 may be duly completed.

Changes.

In the **Assam Rules**, the above rule has been numbered as 14 and the words *at once* substituted for the words, *without unnecessary delay*.

In **Bengal, Bihar, Bombay, C. P. Punjab and the Madras Rules**, substitute the words *at once* for the words *without unnecessary delay*.

Section 26 (3) (g).

16. Deductions for breach of contract. (1) No deduction for breach of contract shall be made from the wages of an employed person who is under the age of fifteen years or is a woman.

(2) No deduction for breach of contract shall be made from the wages of any employed person unless :

(a) there is provision in writing forming part of the terms of the contract of employment requiring him to give notice of the termination of his employment ; and

(i) the period of this notice does not exceed *fifteen* days or the wage-period, whichever is less ; and

(ii) the period of this notice does not exceed the period of notice which the employer is required to give of the termination of that employment ;

(b) this rule has been displayed in English and in the language of the majority of the employed persons at or near the main entrance of the factory and has been so displayed for not less than one month before the commencement of the absence in respect of which the deduction is made ;

(c) a notice has been displayed at or near the main entrance of the factory giving the names of the persons from *whom* the deduction is proposed to be made, the number of days wages to be deducted and the conditions (if any) on which the deduction will be remitted.

Provided that where the deduction is proposed to be made from all the persons employed in any departments or sections of the factory, it shall be sufficient, in lieu of giving the names of the persons in such departments or sections, to specify the departments or sections affected.

(3) No deduction for breach of contract shall exceed the wages of the person employed for the period by which the notice of termination of service given falls short of the period of such notice required by the con-

tract of employment.

(4) If any conditions have been specified in the notice displayed under clause (c) of sub-rule (2), no deduction for breach of contract shall be made from any person who has complied with these conditions.

Changes.

In the Assam Rules, the above rule has been numbered as 15.

In the C. P. Rules, substitute the words *eight* for the words *fifteen* occurring in sub-rules (2) (a) (i).

In the Madras Rules, omit the words "*or is a woman*" occurring in sub-rule (i) and sub-rule (2) (a) be substituted by the following—

(a) there is provision in writing forming part of the terms of the contract of employment requiring the employee to give notice of the termination of such employment and the period of notice does not exceed either

(i) fifteen days or the wage-period, whichever is less, or

(ii) the period of notice which the employer is required to give of the termination of that employment ;

In sub rule (2) (c) substitute the words "*from whose wages*" for the words "*from whom.*"

Section 26 (3) (i).

17. Advances. (1) An advance of wages not already earned shall not, without the previous permission of an Inspector, exceed an amount equivalent to the wages earned by the employed person during the preceding *two* calendar months, or if he has not been employed for that period, *twice the wages he is likely to earn during the two subsequent calendar months.*

(2) The advances may be recovered in instalments by deductions from wages spread over not more than *twelve* months. No instalment shall exceed one-third, or where the wages for any wage-period are not more than twenty rupees, one-fourth of the wages for the wage-period in respect of which the deduction is made.

(3) The amounts of all advances sanctioned and the repayments thereof shall be entered in a register in Form III.

Changes.

In the Assam Rules, the above rule has been numbered as 16.

In the Bengal Rules, substitute the following words for the

words, "*twice the wages he is likely to earn during the two subsequent calendar months*"—

"an amount equivalent to the wages he is likely to earn during the two subsequent calendar months."

In sub-rule (2) add the word "*ordinarily between wages and spread over*."

In the **Bombay Rules**, substitute the words *four* for the words *two* occurring in sub-rule (1) and read the following line for the existing lines (*as twice the wages he is likely to earn during the two subsequent calendar months*).

"the wages he is likely to earn during the four subsequent calendar months."

"In sub-rule (2) substitute the words *eighteen* for the words *twelve*."

The following sub-rule (4) be added after sub rule (3) :—

"The rate of interest charged for advances granted under sub-rule (1) shall not exceed $6\frac{1}{2}$ per cent per annum."

In the **C. P. Rules**, add the following proviso to sub-rule (2) :—

"Provided that in the case of advances exceeding the ordinary limit made with the previous permission of an inspector in accordance with sub-rule (1) of this rule the recovery may be spread over such larger period as the Director of Industries may fix on the application of the employer."

Section 26 (3) (a).

18. Annual Return. In respect of every factory a return shall be sent in Form IV so as to reach the Chief Inspector of Factories not later than the 15th of February following the end of the calendar year to which it relates.

Changes.

In the **Assam Rules**, the above rule has been numbered as 17 with the addition of the following words after the words "every factory" in first line :—

"in which during the calendar year any fines have been imposed or any deductions for breach of contract or for damage or loss have been made from wages."

In the **Bihar, Punjab and Bengal Rules**, the additional words noted in case of Assam rules, are also to be incorporated.

In the **Bombay Rules**, substitute the following for the above-noted rule :—

In respect of every factory a return shall be sent in Form IV so as to reach the authority appointed under Rule 9 not later than the 15th of February following the end of the calendar year to

which it relates."

In the **C. P. Rules**, substitute the following as Rule 18 :—

"In respect of every factory subject to the Act, a return shall be sent in Form IV so as to reach the Chief Inspector of Factories not later than the 15th of February following the end of the calendar year to which it relates."

Section 26 (3) (j).

19. Costs. (1) Where the Authority or the Court, as the case may be, directs that any cost shall not follow the event *he shall state his reasons for so doing in writing.*

(2) The costs which may be *awarded shall* include —

(a) the charges necessarily incurred on account of court-fees ;

(b) the charges necessarily incurred on subsistence money to witnesses ; and

(c) pleader's fees which shall ordinarily be Rs. 10 provided that the Authority or the court, as the case may be, in any proceedings, may reduce the fee to a sum not less than Rs. 5 or increase it to a sum not exceeding Rs. 30.

(3) When a party engages more pleaders than one to defend a case, he shall be allowed one set of costs only.

Changes.

In the **Assam Rules**, the above rule is numbered 18.

In the **Bihar Rules**, sub-rules (1) and (2) consist of sub-rules (2) and (3) noted above, with the words "*proceedings under the Act*" added between the words *awarded* and *shall* in sub-rule (2) line 1.

In the **Bombay Rules**, the above rule is numbered 20, while rule 19 reads as under :—

"*Display of rates of wages.* In every cotton spinning and weaving factory, a notice shall be displayed in each department of the factory, specifying the rates of wages payable to all persons employed in such factory other than those who are employed in positions of supervision or management or those who are employed in a confidential position in accordance with the provisions of the **Bombay Factories Rules, 1935.**

In the **C. P. Rules**, the above rule is numbered 20, while Rule 19 reads as under :—

Display of rates of wages. In every cotton spinning and weaving factory, a notice in English and in the language of the majority of the persons employed therein shall be displayed in a conspicuous place, specifying the rates of wages payable to all persons employed in such factory other than those who are employed in positions of supervision or management or those who are employed in a confidential position in accordance with the provisions of the Central Provinces Factories Rules, 1935.

In the Madras Rules, substitute the words *the reasons for the direction shall be stated in writing by such Authority or Court for the words he shall state his reasons for so doing in writing.*

20. The Authority or the Court, as the case may be, may fix fees on the payment of which any person entitled to do so, may obtain copies of any documents filed with the Authority or the Court, as the case may be :

Provided that the Authority or the Court, as the case may be, may, in consideration of the poverty of the applicant, grant copies free of cost.

Changes.

In the Assam Rules, this rule is numbered 19.

In the Bombay Rules, this rule is numbered 21.

In the C.P. Rules, this rule is numbered 21,

Section 26 (3) (k).

21. Fees. *The fee payable in respect of proceedings under the Act shall be :*

- (i) For every application to...Four annas in respect of
summon a witness ...each witness
- (ii) For every other appli- ...Eight annas
cation made by or on
behalf of an individual
person before the
Authority.
- (iii) For every other appli- Four annas for each mem-
cation made by or on behalf ber of the group, subject
of an unpaid group before to a maximum of five
the Authority rupees.
- (iv) (a) For every appeal Two rupees and eight
lodged with the court. annas for the first hundred
rupees or portion thereof
and eight annas for every

additional hundred rupees or portion thereof, subject to a maximum of ten rupees.

(b) For every other miscellaneous application filed before the court. Eight annas.

Provided that the Authority or the Court may, in consideration of the poverty of the applicant, reduce or remit this fee :

Provided further that no fee shall be chargeable in respect of an application presented by an Inspector.

Changes.

In the Assam Rules, this rule is numbered 20, clause (iv) reading as under.

(iv) For every appeal lodged with the Court. Five rupees.

In the Bengal Rules, this rule should be substituted as under :—

The fee payable in respect of proceedings under the Act shall be :—

(i) For every certificate of authorisation ... One rupee.

(ii) For every application to summon a witness—

(a) for the first witness mentioned in the application .. Eight annas

(b) for each subsequent witness in the application. . Four annas

(iii) For every other application made by or on behalf of an individual person before the Authority. ... Eight annas

(iv) For every other application made by or on behalf of an unpaid group before the Authority. ... Four annas for each member of the group, subject to a maximum of five rupees.

(v) For every appeal lodged with the Court. Five rupees.

Provided that the Authority or the Court may, in consideration of the poverty of the applicant, reduce or remit this fee.

Provided further that no fee shall be chargeable in respect of an application presented by an Inspector.

In the Bihar, Bombay, C.P., Punjab and Madras Rules, Clause (iv) should be read as under :—

For every appeal lodged with ... Five rupees
the Court.

In the Madras Rules, the words *Court fee* should be read for the word *fee*.

In the Bombay and C.P. Rules this rule with changes above referred is numbered 22.

Section 26 (3) (l).

22. Abstracts. The abstracts of the Act and of the Rules made thereunder to be displayed under Section 25 shall be in Form V.

Changes.

In the Assam Rules, this rule is numbered 21.

In the Bombay and C.P. Rules, this rule is numbered 23.

Section 26 (4).

23. Penalties. Any breach of Rules 3, 4, 5, 6, 6-A, 8, 12, 15 and 18 of these rules shall be punishable with fine which may extend to two hundred rupees.

Changes.

In the Assam Rules, this rule is numbered 22 with figures 11, 14 and 17 substituted for 12, 15 and 18.

In the Bombay and C.P. Rules, this rule is numbered 24 with the word *and* shifted after 18 and figure 19 inserted after the word *and*.

Note. The figures 6 A is not found in the Rules of other Provinces.

FORM I

Register of Fines

.....Factory.....

Serial number	Name (of the operative)	Father's name	Department	Act or omission for which fine imposed	Whether workman allowed cause against fine or not. If so, enter date	Rate of wages	Date	Amount realized	Amount remitted	Date of realization or disbursement	Amount realized	Reference to serial number (column 1)	Amount disbursed	Object on which disbursed	Amount in hand (in the Fund)	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	

(1) Forms No. I to V prescribed in the rules by all the Provincial Governments are almost identical. Following are some of the changes :—

1. In Form No. I prescribed by the Bombay Rules, there is an additional column showing wage period. 2. In Forms I and II prescribed by the Bombay Rules, there is an additional column showing designation of officer imposing fine or deduction.

FORM II

Register of Deductions for damage or loss caused to the employer by the neglect or default of the employed person

.....Factory.....

Serial No.	Name	Father's name	Department	Damages or loss caused		Whether worker showed cause against deduction or not. If so enter date	Date	Amount	No. of instalments, if any	Date	Amount realized	Remarks
				Nature	Amount							
1	2	3	4	5	6	7	8	9	10			

FORM III

Register of advances made to employed persons

.....Factory.....

Serial No.	Name	Father's name	Department	Date and amount of advance made	Purpose (s) for which advance made	No. of instalments by which advance to be re-paid	Postponement granted	Date on which total amount repaid	Remarks
1			4	5	6	7	8	-	10

FORM IV

*Deduction from Wages.***Return for the year ending 31st December, 19...**

1. Name of factory and postal address
2. Average number of persons employed daily

Adults.....
Adolescent
Children.....
3. Total wages paid including deductions under clauses (d) to (j) of sub-section (2) of Section 7 of the Act and no other deductions.
4. Number of cases and amounts realized as

	No. of Cases	Amount

(a) fines

(b) deductions for damage or loss

(c) deductions for breach of contract

Disbursement from fine fund -	
Amount	Purpose
Rs	

Dated.....19 .

Signature.....

Designation.....

Form V.

Abstract of the Payment of Wages Act, 1936, and the Rules made thereunder.*Whom the Act affects.*

1. The Act applies to the payment of wages to persons in this factory receiving less than Rs. 200 a month.

2. No employed person can give up by contract, or agreement, his rights under the Act.

Definition of Wages.

3. "Wages" means all remuneration payable to an employed person on the fulfilment of his contract of employment.

It includes bonus and any sum payable for want of proper notice of discharge.

It excludes :—

- (a) the value of house accommodation, supply of light, water, medical attendance, or other amenity or of any service excluded by the Governor-General or the local Government ;
- (b) the employer's contribution to a pension or provident fund ;
- (c) travelling allowance or concession or other special expenses entailed by the employment;
- (d) any gratuity payable on discharge.

Responsibility for and method of payment.

4. The manager of the factory is responsible for the payment under the Act of Wages to persons employed under him, and any contractor employing persons is responsible for payment to the persons he employs.

5. Wage-periods shall be fixed for the payment of wages at intervals not exceeding one month.

6. Wages shall be paid on a working day within seven days of the end of the wage-period (or within ten days if 1,000 or more persons are employed).

The wages of a person discharged shall be paid not later than the second working day after his discharge.

7 Payments in kind are prohibited.

Fines and deductions.

8. No deduction shall be made from the wages except those authorized under the Act (see paragraph 9 to 15 below).

9. (1) Fines can be imposed only for such acts and omissions as the employer may, with the previous approval of the Chief Inspector of Factories, specify by a notice displayed at or near the main entrance of the factory and after given the employed person an opportunity for explanation.

(2) Fine —

(a) shall not exceed half an anna in the rupee,

(b) shall not be recovered by instalments, or later than sixty days of the date of imposition,

(c) shall be recorded in a register and applied to such purposes beneficial to the employed persons as are approved by the Chief Inspector of Factories,

(d) shall not be imposed on a child.

10. (a) Deductions for absence from duty can be made only on a count of the absence of the employed person at times when he should be working, and such deductions must not exceed an amount which is in the same proportion to his wages for the wage-period as the time he was absent in that period is to the total time he should have been at work.

(b) If ten or more employed persons, acting in concert, absent themselves without reasonable cause and without due notice the deduction for absence can include wages for eight days in lieu of notice, but—

(1) no deduction for breaking a contract can be made from a person under 15 or woman ;

(2) there must be a provision in writing which forms part of the contract of employment, requiring

that a specific period of notice of intention to cease work not exceeding 15 days or this period of notice which the employer has to give to discharge a worker, must be given to the employer and that wages may be deducted in lieu of such notice ;

- (3) the above provision must be displayed at or near the main entrance of the factory ;
- (4) no deduction of this nature can be made until a notice that this deduction is to be made has been posted at or near the main entrance of the factory ;
- (5) no deduction must exceed the wages of the employed person for the period by which the notice he gives of leaving employment, is less than the notice he should give under his contract.

11. Deductions can be made for damage to or loss of goods expressly entrusted to an employed person or for loss of money for which he is required to account ; where such damage or loss is due to his neglect or default.

Such deduction cannot exceed the amount of the damage or loss caused and can be made only after giving the employed person an opportunity for explanation.

12. Deductions can be made, equivalent to the value thereof, for house accommodation, amenities or services (other than tools and raw material) supplied by the employer, provided these are accepted by the employed person as a part of the terms of his employment and have in the case of amenities and services been authorized by order of Government.

13. (a) Deductions can be made for the recovery of advances or for adjustments of overpayment of wages.
- (b) Advances made before the employment began can only be recovered from the first payment of wages for a complete wage-period but no recovery can be made of advances given for travelling expenses before employment began

- (c) Advances of unearned wages can be made at the paymaster's discretion during employment but must not exceed the amount of two months' wages without the permission of an inspector.

These advances can be recovered by instalments, spread over not more than 12 months and the instalments must not exceed one third, or if the wages are not more than Rs. 20 one-fourth of the wages for any wage-period.

14. Deductions can be made for subscription to and for repayment of advances from any recognized provident fund.

15. Deductions can be made for payments to co-operative societies approved by the local Government or to the post office, subject to any conditions imposed by the local Government.

Inspections.

16. An inspector can enter on any premises, and an exercise powers of inspection (including examination of documents and taking of evidence) as he may deem necessary for carrying out the purposes of the Act.

Complaints of deductions or delays.

17. (1) Where irregular deductions are made from the wages, or delays in payment take place, an employed person can make an application in the prescribed form within six months to the authority appointed by the local Government for the purpose. An application delayed beyond this period may be rejected unless sufficient cause for the delay is shown.

(2) Any legal practitioner, official of a registered trade union, inspector under the Act, or other person acting with the permission of the Authority can make the complaint on behalf of an employed person.

(3) A single application may be presented by, or on behalf of, any number of persons belonging to the same factory the payment of whose wages has been delayed.

Action by Authority.

18. The authority may award compensation to the employed person in addition to ordering the payment of delayed wages or the refund of illegal deductions.

If a malicious or vexatious complaint is made, the authority may impose a penalty, not exceeding Rs. 50, on the applicant and order that it be paid to the employer.

Appeal against the authority.

19. An appeal in the prescribed form against a direction made by the authority may be preferred, within thirty days to the District Court—

- (a) by the paymaster if the total amount directed to be paid exceeds Rs. 300 ;
- (b) by an employed person if the total amount of wages withheld from him or his co-workers exceeds Rs. 50 ;
- (c) by a person directed to pay a penalty for a malicious or vexatious application.

Punishment for breaches of the Act.

20. Any one delaying the payment of wages beyond the due date, or making any unauthorized deduction from the wages, is liable to a fine up to Rs. 500, but only if prosecuted with the sanction of the authority or the Appellate Court.

21. The paymaster who—

- (1) does not fix a wage-period, or
- (2) makes payment in kind, or
- (3) fails to display at or near the main entrance of the factory this abstract in English and in the language of the majority of the employed persons, or
- (4) breaks certain rules made under the Act, is liable to a fine not exceeding Rs. 200.

A complaint to this effect can be made only by the inspector, or with his sanction.

Changes.

- (1) In Form V of **Assam Rules**, there is an additional para numbered 22 which reads as under :—

"22. All letters, reports, returns and notices may be addressed to the official concerned by his official title and not by name."

- (2) In Form No. V of **Bihar Rules**, Para No. 3 reads as under :—

"Wages" means all remuneration payable to an employed person on the fulfilment of his contract of employment.

It includes any bonus and any sum which may be payable by reason of termination of employment.

It excludes :—

- (a) The value of any house-accommodation, supply of light, water, medical attendance, or any other amenity, or of any service excluded by the Governor-General-in-Council or the local Government

- (b) any contribution paid by the employer to a pension or provident fund;

- (c) any travelling allowance or the value of any travelling concession or any sum paid to the employed persons to defray special expenses entailed on him by the nature of his employment;

- (d) any gratuity payable on discharge.

- (3) In Para 16 of Form No. V, **C. P. Rules**, the following words be inserted after the words "premises," in first line :—

"at all reasonable hours."

- (4) In Form No. V, **Bombay Rules**, Para 9 begins with the following words :—

Except in the case of Municipal Factories in the Town and Island of Bombay—

In para 19, line 2, add the following words after "thirty days" :—

"In Bombay to the Court of Small Causes and elsewhere".

- (5) In **Bengal Rules**, Form No. V, Para 19, add the following brackets and words after thirty days" —

(In Calcutta to the Court of Small Causes)

- (6) In **Madras Rules**, Form No. V the following changes be incorporated in para 3, line 3, add the following words after the word bonus :—

"If provided for expressly or impliedly in the contract of employment."

- In Para 9, line 2, the word 'may' be substituted by the words "has" and in line 3, the word "specify" be substituted by the word "specified."

In para 10, (a) substitute :—

(a) bearing" for the words "which is in" in line 3

(b) 'period of his absence bears to the total period during which he should have been at work during the wage-period' for the words, "time he was absent in that period is to the total time.....at work."

Para 10 (b) (2) be replaced as under —

"(2) There must be a provision in writing forming part of the contract of employment, and requiring the employee to give notice of the termination of such an employment, the period of such notice not exceeding either—

(i) fifteen days or the wage-period, whichever is less, or

(ii) the period of notice which the employer is required to give of the termination of that employment.

APPENDIX III.

The Minimum Wages Act, 1948.

(ACT No XI OF 1948.)

An Act to provide for fixing minimum rates of wages in certain employments.

WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;

It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Minimum Wages Act, 1948.

(2) It extends to all the Provinces of India.

2 Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “adult,” “adolescent” and “child” have the meanings respectively assigned to them in Section 2 of the Factories Act, (XXV of 1934);

(b) “appropriate Government” means—

(i) in relation to any scheduled employment carried on by or under the authority of the Central Government, by the Federal railway authority, or a railway company operating a Federal railway or in relation to a mine, oil-field or major port, or any corporation established by an Act of the Central Legislature, the Central Government; and

(ii) in relation to any other scheduled employment, the Provincial Government;

(c) “competent authority” means the authority appointed by the appropriate Government by notification in its official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

(d) "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the official Gazette to be the cost of living index number applicable to employees in such employment;

(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of Section 26,—

- (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under Clause (c) of sub-section (1) of Section 9 of the Factories Act, 1934 (XXV of 1934), as manager of the factory;
- (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the Department;
- (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
- (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible

to the owner for the supervision and control of the employees or for the payment of wages ;

(f) "prescribed" means prescribed by rules made under this Act ;

(g) "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment ;

(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, but does not include—

(i) the value of—

(a) any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government ;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance ;

(iii) any travelling allowance or the value of any travelling concession ;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment ; or

(v) any gratuity payable on discharge ;

(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed ; and includes an out worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person

where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the armed forces of the Crown.

3. Fixing of minimum rates of wages.—(1) The appropriate Government shall, in the manner hereinafter provided,—

(a) fix, before the expiry of three years in the case of an employment specified in Part II of the Schedule, or two years in any other case, from the commencement of this Act or, as the case may be, from the date of the notification under Section 27 including the employment in the Schedule, the minimum rates of wages payable to employees employed in all scheduled employments;

(b) review at such intervals as it may think fit, such intervals not to exceed five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary:

Provided that the appropriate Government shall not be required to fix minimum rates of wages in respect of any scheduled employment in which there are in the whole Province less than one thousand employees engaged in such employment.

(2) The appropriate Government may fix—

(a) a minimum rate of wages for time work (hereinafter referred to as “a minimum time rate”);

(b) a minimum rate of wages for piece work (hereinafter referred to as “a minimum piece rate”);

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as “a guaranteed time rate”);

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

(3) In fixing or revising minimum rates of wages under this section—

(a) different minimum rates of wages may be fixed for—

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities ;

(b) minimum rates of wages may be fixed by the hour, by the day or by any larger wage period as may be prescribed;

Provided that where any wage-periods have been fixed under Section 4 of the Payment of Wages Act, 1936 (IV of 1936), minimum wages shall be fixed in accordance therewith.

4. Minimum rate of wages.—(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Section 3 may consist of—

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance");
or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized;
or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

5 Procedure for fixing minimum wages.—(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act, the appropriate Government shall either—

(a) appoint a committee to hold enquiries and advise it in this behalf with such sub-committees for different localities as it may deem expedient to appoint to assist such committee, or

(b) by notification in the official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee appointed under Clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under Clause (b) of that sub-section, the appropriate Government shall, by notification in the official Gazette, fix the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

6. Advisory Committees and sub-committees.—For the purpose of revising minimum rates of wages fixed under this Act, the appropriate Government shall appoint as many advisory committees and sub-committees as it considers necessary to inquire into the conditions prevailing in any scheduled employment and to advise the appropriate Government in making such revision in respect of that employment.

7. Advisory Board.—For the purpose of co-ordinating the work of committees, sub-committees, advisory committees and advisory sub-committees appointed under Sections 5 and 6 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

8. Central Advisory Board.—(1) For the purpose of advising the Central and Provincial Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

9. Composition of committees, etc.—Each of the committees, sub-committee-, advisory committees, advisory sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of its total number of member; one of such independent persons shall be appointed the Chairman by the appropriate Government.

10. Procedure for revision of minimum rates of wages.—(1) Before revising any minimum wages fixed under this Act, the appropriate Government shall consult all advisory committees appointed under Section 6 to inquire into the conditions prevailing in the scheduled employment concerned, and the Advisory Board also.

(2) Revisions of minimum wages shall be notified

by the appropriate Government in the official Gazette and unless the notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

11. Wages in kind.—(1) Minimum wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the official Gazette, authorize the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

12. Payment of minimum rates of wages.—(1) Where in respect of any scheduled employment a notification under Section 5 or Section 10 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (IV of 1936).

13. Fixing hours for a normal working day, etc.—In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may—

(a) fix the number of hours of work which shall

constitute a normal working day, inclusive of one or more specified intervals;

- (b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
- (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

14. Overtime. (1) Where an employee, whose minimum rate of wages is fixed under this Act, by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of Section 47 of the Factories Act, 1934 (XXV of 1934) in any case where those provisions are applicable.

15. Wages of worker who works for less than normal working day.— If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day :

Provided, however, that he shall not be entitled to receive wages for a full normal working day—

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

16. Wages for two or more classes of work.—Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

17. Minimum time rate wages for piece work.—Where an employee is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Act, the employer shall pay to such employee wages at not less than the minimum time rate.

18. Maintenance of registers and records.—(1) Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out-work to them, notices in the prescribed form containing prescribed particulars.

(3) The appropriate Government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

19. Inspectors.—(1) The appropriate Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act, and define the local limits within which they shall exercise their functions.

(2) Subject to any rules made in this behalf, an

Inspector may, within the local limits for which he is appointed—

(a) enter, at all reasonable hours, with such assistants (if any), being persons in the service of the Crown or any local or other public authority, as he thinks fit, any premises or place where employees are employed or work is given out to out-workers in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection ;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an employee employed therein or an employee to whom work is given out therein,

(c) require any person giving out-work and any out-workers, to give any information, which is in his power to give, with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;

(d) take copies of any register, record of wage or notices or of any portions thereof ; and

(e) exercise such other powers as may be prescribed.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code (XLV of 1860).

20. Claims—(1) The appropriate Government may, by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages to employees employed or paid in that area.

(2) Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act, the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the minimum wages became payable :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer or give them an opportunity of being heard, and after such further inquiry if any as it may consider necessary may, without prejudice to any other penalty to which the employer may be liable under this Act, direct the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess and the Authority may direct payment of such compensation in cases where the excess is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the

Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

21. Single application in respect of a number of employees.—(1) A single application may be presented under Section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of Section 20 shall not exceed ten times the aggregate amount of such excess.

(2) The Authority may deal with any number of separate pending applications presented under Section 20 in respect of employees in the scheduled employments in respect of which minimum rates of wages have been fixed, as a single application presented under sub-section (1) of this section and the provision of that sub-section shall apply accordingly.

22 Penalties and procedure.—(1) Any employer who pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of this Act, or infringes any order or rules made under Section 13, shall be punishable with imprisonment of either description for a term which may extend to six

months, or with fine which may extend to five hundred rupees, or with both :

Provided that in imposing any fine for an offence under this sub section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 20.

(2) Any employer who fails to maintain a register or record required to be maintained under Section 18 shall be punishable with fine which may extend to five hundred rupees.

(3) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1), unless an application in respect of the facts constituting the offence has been presented under Section 20 and has been granted wholly or in part, and the Authority granting such application has sanctioned the making of the complaint.

(4) No Court shall take cognizance of an offence under sub section (2) except on a complaint made by, or with the sanction of, an Inspector.

(5) No Court shall take cognizance of an offence—

(a) under sub-section (1), unless complaint thereof is made within one month of the grant of sanction under sub-section (3);

(b) under sub-section (2), unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

23. Exemption of employer from liability in certain cases.—Where an employer is charged with an offence against this Act, he shall be entitled, upon complaint duly made by him, to have any other person, whom he charges as the actual offender, brought before the Court at the time appointed for hearing the charge ; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court,

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged.

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

24. Bar of suits. No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed—

(a) forms the subject of an application under Section 20 which has been presented by or on behalf of the plaintiff, or

(b) has formed the subject of a direction under that section in favour of the plaintiff, or

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or

(d) could have been recovered by an application under that section.

25. Contracting out.—Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

26. Exemptions and exceptions —(1) The appropriate Government may, subject to such conditions if any as it may think fit to impose, direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees.

(2) The appropriate Government may, if for special reasons it thinks so fit, by notification in the official Gazette direct that for such period as it may

specify the provisions of this Act or any of them shall not apply to all or any class of employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment.

(3) Nothing in this Act shall apply, to the wages payable by an employer to a member of his family who is living with him and is dependent on him.

Explanation.—In this sub-section a member of the employer's family shall be deemed to include his or her spouse or child or parent or brother or sister.

27. Power of Provincial Government to add to a Schedule—The appropriate Government, after giving by notification in the official Gazette not less than three months' notice of its intention so to do may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the Province be deemed to be amended accordingly.

28. Power of Central Government to give directions.—The Central Government may give directions to a Provincial Government as to the carrying into execution of this Act in the Province.

29. Power of the Central Government to make rules.—The Central Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the Central Advisory Board.

30. Power of appropriate Government to make rules.—(1) The appropriate Government may, subject to the condition of previous publication, by notification in the official Gazette, make rules for carrying out the purposes of this Act;

(2) without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees, sub-committees, advisory committees, advisory sub-committees and the Advisory Board ;

(b) prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the enquiry before the committees, sub-committees, advisory committees, advisory sub-committees and the Advisory Board;

(c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates ;

(d) prescribe the time and conditions of payment of, and the deductions permissible from, wages ;

(e) provide for giving adequate publicity to the minimum rates of wages fixed under this Act;

(f) provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such day ;

(g) prescribe the number of hours of work which shall constitute a normal working day ;

(h) prescribe the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day ;

(i) prescribe the form of registers and records to be maintained and the particulars to be entered in such registers and records ;

(j) provide for the issue of wage books and wage slips and prescribe the manner of making

and authenticating entries in wage books and wage slips;

(k) prescribe the powers of Inspectors for purposes of this Act ;

(l) regulate the scale of costs that may be allowed in proceedings under Section 20 ;

(m) prescribe the amount of court-fees payable in respect of proceedings under Section 20 ; and

(n) provide for any other matter which is to be or may be prescribed.

THE SCHEDULE

[See Sections 2(g) and 27]

PART I.

1. Employment in any woollen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or dal mill.
3. Employment in any tobacco (including bidi making) manufactory,
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
7. Employment on road construction or in building operations.
8. Employment in stone breaking or stone rushing.
9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.

PART II.

1. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer or on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce).

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